## Exhibit P

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UNITED STATES DISTRICT COURT
1
             DISTRICT OF NEW JERSEY
2
             CIVIL ACTION NO. 2:10-CV-5398
3
   KEVIN FRAZIER,
4
              Plaintiff,
5
                                  : CIVIL ACTION
         vs.
6
   BED BATH AND BEYOND INC., and :
7
   GARY NEWTON, in his individual:
8
   and professional capacities, :
9
             Defendants.
10
         Computer-aided transcript of deposition
11
    testimony of CONNIE VAN DYKE, taken
12
    stenographically in the above-entitled matter
13
    before CANDACE J. GREEN, a Certified Court
14
    Reporter and Notary Public of the State of New
15
    Jersey, at the Law Offices of PROSKAUER ROSE,
16
    LLP, One Newark Center, 18th floor, Newark, New
17
    Jersey, taken on Wednesday, December 14, 2011,
18
    commencing at 2:35 p.m.
19
                GUY J. RENZI & ASSOCIATES
20
       CERTIFIED COURT REPORTERS & VIDEOGRAPHERS
21
             GOLDEN CREST CORPORATE CENTER
22
            2277 STATE HIGHWAY #33, SUITE 410
23
                TRENTON, NEW JERSEY 08690
24
      TEL: (609) 989-9199 TOLL FREE: (800) 368-7652
25
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	2		4
1	APPEARANCES:	1	LITIGATION SUPPORT PAGE
2		2	
3	ZATUCHNI & ASSOCIATES LLC	3	
4	BY: DAVID ZATUCHNI, ESQ.	4	DIRECTION TO WITNESS NOT TO ANSWER
5	287 South Main Street	5	Page Line Page Line
6	Route 29	6	(None)
7	Lambertville, New Jersey 08530	7	
8	Tel: (609) 243-0300	8	REQUEST FOR PRODUCTION OF DOCUMENTS
9	E-mail: davidz@zatuchniassociates.com	9	Page Line Page Line
10	Attorneys for Plaintiff.	10	(None)
11	•	11	
12		12	
13	PROSKAUER ROSE, LLP	13	
14	BY: MARVIN M. GOLDSTEIN, ESQ.	14	INFORMATION TO BE FURNISHED
15	One Newark Center	15	Page Line Page Line
16	18th Floor	16	(None)
17	Newark, New Jersey 07102-5211	17	
18	Tel: (973) 274-3200	18	
19	E-mail: mmgoldstein@proskauer.com	19	QUESTIONS MARKED FOR A RULING
20	Attorneys for Defendants.	20	Page Line Page Line
21		21	(None)
22	ALSO PRESENT:	22	
23	PAUL DePRIMA	23	
24	MICHAEL H. WILCK	24	
25		25	
	3	-	5
1	INDEX	1	CONNIE VAN DYKE,
2		2	650 Liberty Avenue, Union, New Jersey
3	WITNESS PAGE	3	07083, having been first duly sworn, was
4	CONNIE VAN DYKE	4	examined and testified as follows:
5	Examination By Mr. Zatuchni 5	5	EXAMINATION BY MR. ZATUCHNI:
6		6	Q. Good afternoon, Ms. VanDyke.
7		7	A. How are you?
8	EXHIBITS	8	Q. My name is David Zatuchni. I'm
9		9	Kevin Frazier's attorney in his lawsuit against
10	ID DESCRIPTION PAGE	10	Bed Bath & Beyond. You're the vice-president
11	VanDyke-1 Letter from Suojanen 25	11	for Human Resources of Bed Bath & Beyond?
12	to EEOC 4/6/09	12	A. Yes, I am.
13		13	Q. And how long have you held that
14	(EXHIBITS NOT ANNEXED HERETO)	14	position?
15	·	15	A. Since 1996, 16 years.
16		16	Q. You were named as a potential
17		17	witness in this case, as a person with
18		18	knowledge by Bed Bath & Beyond, BB&B.
19		19	MR. GOLDSTEIN: Don't call it Linens
20		20	'N Things.
21		21	Q. And that's why I called you in for
22		22	this deposition. Did you play a role in Kevin
23		23	Frazier's termination in any way?
24		24	A. Yes.
25		25	Q. You did. So you've been the

Guy J. Renzi & Associates (609) 989-9199 www.renziassociates.com

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	18		20
1	Q. Now, at this point you were aware	1	the corporate offices, of retaliation, that
2	that Mr. Frazier had made an EEOC charge of	2	might only be in the form of a verbal
3	retaliation against Bed Bath & Beyond and	3	conversation and it might not be documented
4	particularly, specifically, his managers, Gary	4	anywhere.
5	Newton and David Ortiz.	5	A. That's right.
6	A. I'm aware of every EEO case that's	6	Q. Okay. So if you don't remember the
7	filed against the company.	7	conversation, then there's no way to know
8	Q. You did know that.	8	whether that conversation occurred or not?
9	A. Uh-huh.	9	A. True.
10	MR. GOLDSTEIN: Yes?	10	Q. After you received the charge of
11	A. Yes.	11	discrimination, did you ask Mr. DePrima about
12	Q. Did Paul DePrima come to you before	12	Mr. Frazier? Did you say: "Did this guy ever
13	you learned of the charge and tell you that Mr.	13	come to Human Resources before he came to the
14	Frazier had complained about retaliation to	14	EEOC?"
15	Human Resources internally in February of '09?	15	A. I really don't remember having a
16	A. I don't remember. I don't have any	16	specific conversation about it because I don't
17	recollection. Sorry.	17	write the position statements, so I don't
18	Q. Okay. So the first time that you	18	remember.
19	knew of any kind of complaint of retaliation by	19	Q. But apart from writing the position
20	Mr. Frazier was only once when you received the	20	statements, wouldn't you be at least curious to
21	EEOC charge.	21	know whether there was an internal complaint
22	A. Yes.	22	that went to Human Resources before an employee
23	Q. If Mr. DePrima knew of a prior	23	made a charge with the EEOC?
24	complaint of retaliation, internal complaint,	24	A. I would, yes.
25	is that something Mr. DePrima should have	25	Q. Do you have any specific
		·	
ļ	19		21
1		1	21
1 2	brought to your attention?	1	recollection of something that
2	brought to your attention?  A. Yes, and by me not remembering, it	2	recollection of something that — A. I don't remember.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	brought to your attention?  A. Yes, and by me not remembering, it doesn't mean he did. It just means I don't remember.  Q. Is that the kind of thing you would not remember?  A. Possible. I have 44,000 associates, so depending on the resolution of an issue, I might not remember it.  Q. As you sit here now, you don't have any independent recollection that you knew of internal complaints before you received the EEOC charge?  A. No.  Q. Were you about to say something?  A. No, that's all right.  Q. If Mr. DePrima was going to tell you about that or does Mr. DePrima communicate with you by email?  A. On certain issues. These issues he	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	recollection of something that — A. I don't remember. Q. Prior to Mr. DePrima coming to you that first time after the charge to talk about preparing a position statement for him, did anybody else come to you before that with respect to any issues relating to Mr. Frazier, as far as you can recall now? A. Not that I can recall. Q. Okay. Let's go back then to May 11th, that Monday. So you guys decided to have — when I say "you guys," you and Mr. DePrima decided to have Mr. DePrima meet with Mr. Newton and Mr. Frazier to determine whether Mr. Frazier admitted doing the things he was accused of? A. Yes. Q. If he did admit, then he would be terminated. A. That's right. Q. Okay. Is there any discussion with
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	brought to your attention?  A. Yes, and by me not remembering, it doesn't mean he did. It just means I don't remember.  Q. Is that the kind of thing you would not remember?  A. Possible. I have 44,000 associates, so depending on the resolution of an issue, I might not remember it.  Q. As you sit here now, you don't have any independent recollection that you knew of internal complaints before you received the EEOC charge?  A. No.  Q. Were you about to say something?  A. No, that's all right.  Q. If Mr. DePrima was going to tell you about that or does Mr. DePrima communicate with you by email?  A. On certain issues. These issues he would be talking to me about, these types of issues.  Q. So you're saying that if Mr.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	recollection of something that —  A. I don't remember.  Q. Prior to Mr. DePrima coming to you that first time after the charge to talk about preparing a position statement for him, did anybody else come to you before that with respect to any issues relating to Mr. Frazier, as far as you can recall now?  A. Not that I can recall.  Q. Okay. Let's go back then to May 11th, that Monday. So you guys decided to have — when I say "you guys," you and Mr. DePrima decided to have Mr. DePrima meet with Mr. Newton and Mr. Frazier to determine whether Mr. Frazier admitted doing the things he was accused of?  A. Yes.  Q. If he did admit, then he would be terminated.  A. That's right.  Q. Okay. Is there any discussion with David — did you have any discussions with David Ortiz on Friday or Monday?
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# Exhibit Q

```
UNITED STATES DISTRICT COURT
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                  DISTRICT OF NEW JERSEY
2
                  CIVIL ACTION NO.: 2:10-CV-5398
3
   KEVIN FRAZIER,
4
             Plaintiff,
5
                                : CIVIL ACTION
6
   BED BATH & BEYOND, BED BATH &:
7
   BEYOND, INC. and GARY NEWTON, :
8
             Defendants.
9
    ----X
10
        Computer-aided transcript of the deposition
11
   testimony of PAUL DEPRIMA taken stenographically in the
12
   above-entitled matter before JACQUELINE MATHEWSON, a
13
   Certified Court Reporter, License No. XI01404, and
14
   Notary Public of the State of New Jersey, at the Law
15
    Offices of PROSKAUER ROSE, LLP, One Newark Center,
16
    Newark, New Jersey 07102 on Thursday, December 15,
17
    2011, commencing at 10:48 a.m.
18
               GUY J. RENZI & ASSOCIATES
19
       CERTIFIED COURT REPORTERS & VIDEOGRAPHERS
20
             GOLDEN CREST CORPORATE CENTER
21
           2277 STATE HIGHWAY #33, SUITE 410
22
               TRENTON, NEW JERSEY 08690
23
     TEL: (609) 989-9199 TOLL FREE: (800) 368-7652
24
                www.renziassociates.com
25
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}	2		4		
1	APPEARANCES:	1	PAUL DEPRIMA, 6 Brownstone Terrace,		
2	ZATUCHNI & ASSOCIATES, LLC	2	Hawthorne, New Jersey 07506, having been duly sworn,		
3			testified as follows:		
1 .					
4			DIRECT EXAMINATION BY MR. ZATUCHNI:		
5	Lambertville, New Jersey 08530	5	Q. Good morning, Mr. DePrima.		
6	Tel: (609) 243-0300	6	A. Morning.		
7	E-mail: dzatuchniassociates.com	7	Q. I apologize for the delay in getting your		
8	Attorneys for the Plaintiff.	8	deposition started today.		
9		9	A. It's okay.		
10	PROSKAUER ROSE, LLP	10	Q. As you know my name is David Zatuchni, and		
11	BY: MARVIN M. GOLDSTEIN, ESQ.	11	for the record, I'm Kevin Frazier's attorney, and we're		
12	One Newark Center, 18th Floor	12	taking your deposition today as part of this lawsuit.		
13	Newark, New Jersey 07102	13	I know you've sat in all the depositions in		
14	Tel: (973) 274-3200	14	this case and you have had the benefit of hearing what		
15	E-mail: mmgoldstein@proskauer.com	15	everybody else had to say.		
16	Attorneys for the Defendants Bed Bath	16	Have you yourself ever been deposed before?		
17	& Beyond and Gary Newton.	17	A. Yes, I have.		
18	& Deyond and Gary Newton.				
19	DED DATH & DEVOND	18	Q. On how many separate occasions?		
:	BED BATH & BEYOND	19	A. Two times, maybe.		
20	BY: MICHAEL H. WILCK, ESQ.	20	Q. You know what the process is. I will be		
21	650 Liberty Avenue	21	asking you questions, your obligation is to answer my		
22	Union, New Jersey 07063	22	questions as truthfully and completely as you can.		
23	Tel: (908) 688-0888	23	You are under oath.		
24	E-mail: michael.wilck@bedbath.com	24	If you don't understand one of my questions,		
25			please let me know and I'll rephrase it, I'll restate		
	3	-	ξ.		
	3		5		
1	INDEX	1	it. Otherwise, we assume for the record that you		
2	INDEX	1 2	it. Otherwise, we assume for the record that you understood my question.		
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Guy J. Renzi & Associates (609) 989-9199 www.renziassociates.com

44 1 Kevin responded, How can Gary rate me an EE other items, and thanked him for it. I meant to call 2 last year and an ME or Meets Expectations this year? him but hadn't gotten around to it. 3 I responded, That wasn't true, because last 3 Kevin asked to know his date of termination. 4 year his overall rating was a Meets Expectations, same 4 I replied that it was his last day of work. 5 as this year. And, yes, there may have been some 5 Kevin asked when that was. 6 categories that were less -- that were twice, that were 6 I looked in ADP. I told Kevin that it was less than last year, but last year's review was Kevin 7 5/11. I heard Kevin Frazier write it. 8 Frazier's first review and Merton's curve taken into 8 Kevin then asked what was the reason for his 9 account. 9 termination? 10 Now review is more objective and based upon 10 I told Kevin that I had given that to him on 11 task-projects assigned. 11 5/11, and that Kevin had written it down. 12 I told Kevin this is another example of how 12 Kevin Frazier asked for it again. 13 he misinterprets things. 13 I told Kevin that I didn't mind helping him 14 Kevin blurted out, Did I misinterpret a 14 with the day of termination, but anything else, he 15 Director using a curse word? 15 would need to put his request in writing for me to 16 I told Kevin that we weren't -- should be determine if we would respond. 16 17 here discussing that issue right now, but rather his 17 Kevin then hung up the phone. 18 review, which is a Meets Expectations with an increase, 18 Q. Okay. 19 unfortunately, not seeing it that way. 19 The date of this conversa --20 The date of the note is 5/27/09? Prepare to separate employment effective 20 21 immediately. Offered Kevin Frazier the opportunity to 21 A. That is the date of the call. 22 resign if he would like his record to reflect as such. 22 Q. And that's the date that you wrote this note? Kevin responded, I'm not leaving, you'll need 23 23 A. Yes, it is. 24 to fire me. 24 Q. If you can take a look at your notes from 25 I said, Okay, you're fired. 25 5/11, on the first page of that note, which is 851. I 43 45 1 Kevin asked the reason. just want to make sure that I have this right. 2 2 I responded, Lost faith in your ability to The first thing that you wrote is, "I 3 represent Bed Bath & Beyond. acknowledge that I was aware of KF's conversations with 4 While Gary Newton and Marissa Farrell went to GN on Friday and this morning", right? 5 5 Kevin Frazier's cube to collect his immediate personal A. Right. 6 property. Kevin mentioned that he had taken some of 6 Q. Then immediately after that you told Kevin, 7 his personal books home. 7 "I told Kevin based on his comment that he shared with 8 I asked why he had done this? GN on Friday during his review that this wasn't the 9 Kevin responded, I knew this was coming. 9 place for him. It's obvious he's not happy here with 10 10 us". Q. When did you write this? 11 A. Immediately thereafter. 11 Did you say that to him? 12 Q. Like how much time between the meeting and 12 Did you say at this point at the beginning of 13 the time that you wrote this? 13 the meeting that this wasn't the place for him? 14 14 A. I escorted Kevin out. And I went back to my I acknowledged that he expressed his 15 office and wrote my notes. 15 displeasure with Bed Bath & Beyond. 16 Q. Okay. 16 Q. Did you say to him --17 So immediately thereafter you're saying? 17 This is your note, right? 18 A. Oh, yeah. 18 A. Yes. 19 Q. Can you turn the page to 855? 19 Q. "I told KF, based on his comment he shared 20 A. Sure. 20 with GN on Friday during his review, that this wasn't 21 Q. Can you read that into the record, please. 21 the place for him." Did you say that to him? 22 A. Sure. 22 A. Yes. 23 It's regarding Kevin Frazier, May 27, 2009. 23 Q. Apart from acknowledging that you were aware 24 Kevin Frazier called today. 24 of his conversation with GN, that's the very first 25 I told Kevin that I received the laptop and thing you said to him that day, according to your own

64 62 A. No. It's not a question. It's more of a 1 EEOC Charge? 2 statement. A. Absolutely. 2 MR. GOLDSTEIN: Off the record. 3 Q. It's you are assertion the fact Mr. Frazier 3 (Discussion held off the record.) 4 had complained internally about retaliation and had a MR. ZATUCHNI: He wanted to make a speech. 5 complaint to the EEOC about retaliation, played no roll Back on the record. 6 whatsoever to terminate him? BY MR. ZATUCHNI: 7 A. Decision to terminate Mr. Kevin Frazier was 7 Q. During this meeting on May 11th, did you ask based upon his behavior on May 8th and May 11th. Has 8 8 Kevin Frazier what the lies were or what the alleged 9 nothing to do with his EEOC Charge. lies were on his review? 10 Q. And you're saying that that decision was 10 A. Kevin stated that he felt Gary's ratings actually made by you on May 11th during the meeting, 11 11 below meets expectation were lies. That they should be 12 not before the meeting? 12 significantly exceeds or exceeds expectations. 13 Based upon his response, yes. 13 Q. Did you say or did you ask him, what is it Q. Was Mr. Frazier taking notes during this May 14 14 about your review that's an lie? 15 11th meeting? 15 A. He was objecting to --16 A. Yes, he did. 16 Q. My question was, what did you ask him? Did Q. He had a pad and paper with him? 17 17 you ask him about --18 A. No. He did not. 18 Did you ask him for specific information? 19 Q. Did he ask for some? 19 A. No. I did not go line by line with his review 20 A. No. He did not. 20 to ask him what he specifically objected to. Q. You provided him with a pad or paper? 21 21 Q. But he told you that the ratings that he 22 A. No. I did not. 22 23 received were lies? Q. So how was he taking notes? 23 A. I believe he said that Gary was a liar or was A. He wrote something on the back of my business 24 24 lying on his review. 25 25 card. 65 63 Q. In giving him certain ratings, I assume 1 O. I see. 1 that's what we're talking about? So he had a business card and he wrote 2 A. In Kevin's eyes the review, it was not 3 something on that. 3 4 accurate. A. I typically give business cards to any 4 Q. Well, it was untruthful, right? That's what 5 associate that's leaving the organization so that they 5 6 he thought. have a contact if they have any questions. 6 A. Yes. Sorry. 7 Q. This is something you gave him at the 7 conclusion of the meeting then or at the beginning? 8 O. If Mr. --8 Is it the use of the term liar that caused 9 A. At some point during the meeting. I can't 9 you to terminate him, both with Gary and during that 10 remember when. 10 11 meeting? Q. Do you know what he wrote on the card? 11 Is it the use of that word or him suggesting 12 A. No. 12 that the -- strike that. Q. Do you know what was being said at the time 13 13 Was it the use of the word that you objected 14 he wrote on the card? 14 to that you think made his termination legitimate? 15 A. It was when he asked me why he was being 15 A. He was being disrespectful and unprofessional 16 16 fired. to his manager by using the word, you're a liar 17 THE WITNESS: Am I allowed to speak to 17 multiple times on May 8th and May 11th. May 11th being 18 18 counsel? on the floor of the office in front of other co-workers 19 MR. ZATUCHNI: Sure. If you want to. 19 and peers of Gary. 20 (Discussion held off the record.) 20 Q. But he denied that he told Gary, you're a 21 Q. Do you want to change or add something to one 21 22 liar, right? of your answers? Did something pop into your head? 22 He denied using the word liar, but he agreed 23 A. No. 23 to saying that Gary was lying. Q. Is there something you want to tell me or do 24 24 O. On the review? 25 you have a question for me about one of my questions?

1	66		68
1	A. On the review.	1	of commotion.
2	Those were the words he used, lying, Gary,	2	Q. Anything else besides that?
3	not you're a liar, Gary.	3	A. No.
4	Q. He told Gary you're lying on my review,	4	Q. So you were saying his conduct was the reason
5	that's what he said?	5	why he was terminated and that included telling Gary
6	A. Right. Both on May 8th and May 11th.	6	that Gary was lying on his review?
7	Q. And you're saying by him saying that was a	7	A. Yes.
8	basis to terminate him?	8	Q. And you're saying that it's the use of the
9	A. It was his conduct on May 8th and May 11th.	9	word lying that's disrespectful?
10	Lying was a component of it. The use of the word lying	10	A. Sure.
11	is a component of it.	11	Q. What if he said your review was retaliatory?
12	Q. Let me put it this way.	12	MR. GOLDSTEIN: Objection. Calls for
13	Do you think that disagreeing with the review	13	something.
14	is a basis to terminate somebody?	14	Q. How is that any different, Mr. DePrima?
15	A. Absolutely not.	15	If he told Gary, Your review is false. Take
16	Q. It wasn't just the fact that he was	16	my hypothetical. He told Gary, Your review is false.
17	disagreeing with it, right? It was	17	And the ratings that you have gave me on the review are
18	A the way he went about it. It was	18	retaliatory. And you've given me those ratings because
19	unprofessional.	19	I made a complaint to the EEOC.
20	Q. So by him you're saying, "You're lying" on	20	If he said that, would that be a basis to
21	his review was disrespectful?	21	terminate him?
22	A. He did it on the floor in his department in	22	A. No.
23	front of his co-workers, Gary's direct reports, peers	23	Q. Why not?
24	of Gary.	24	A. Because his tone and where he made those
25	Q. How do you know that?	25	accusations.
	67		69
. 1	A. Gary told me.	1	
2	In fact, we got calls that there was a	1 2	Q. Oh, so it's not him saying, You're lying, right? It's the tone he used and where he said it now;
3	commotion going on in IT West.	3	is that what your testimony is?
4	Q. When did you get the call?	4	A. It was his actions and his words and his
5	A. I got the call shortly after Gary called me	5	conduct on May 8th and May 11th.
6	to tell me what happened.	6	Q. Okay.
7	Q. What day was that?	7	If he said what I just said, your evaluation
8	A. That was on May 11th.	8	is false and retaliatory, you would not have terminated
9	Q. Was it May 11th or May 8th?	9	Mr you're saying if he said that?
10	A. May 11th.	10	A. You're saying that fairly calm. Kevin did not
11	Q. So you didn't get calls on May 8th that there	11	say what he said calmly. And he said it in an open
12	was a commotion, you got calls that there was commotion	12	space, a work place. Not in a closed conference room
	on May 11th, correct?	13	one-on-one.
13		Š.	Q. Let's really kind of go through this then.
13 14	A. Correct.	14	
14	<ul><li>A. Correct.</li><li>Q. And who did you get calls form?</li><li>A. I didn't get the call. Calls came into the</li></ul>	15	You're saying you're saying strike
14 15	Q. And who did you get calls form?	15 16	You're saying you're saying strike that.
14 15 16	<ul><li>Q. And who did you get calls form?</li><li>A. I didn't get the call. Calls came into the</li></ul>	15 16 17	You're saying you're saying strike that.  What if Mr. Frazier was calm and they were in
14 15 16 17	<ul><li>Q. And who did you get calls form?</li><li>A. I didn't get the call. Calls came into the Human Resources.</li></ul>	15 16	You're saying you're saying strike that.  What if Mr. Frazier was calm and they were in a conference room and he said, You're lying on this
14 15 16 17 18	<ul><li>Q. And who did you get calls form?</li><li>A. I didn't get the call. Calls came into the</li><li>Human Resources.</li><li>Q. Do you know who called?</li></ul>	15 16 17 18 19	You're saying you're saying strike that.  What if Mr. Frazier was calm and they were in a conference room and he said, You're lying on this evaluation. This evaluation is full of lies. He said
14 15 16 17 18 19	<ul> <li>Q. And who did you get calls form?</li> <li>A. I didn't get the call. Calls came into the</li> <li>Human Resources.</li> <li>Q. Do you know who called?</li> <li>A. No. I do not. I don't recall to be honest</li> </ul>	15 16 17 18 19 20	You're saying you're saying strike that.  What if Mr. Frazier was calm and they were in a conference room and he said, You're lying on this evaluation. This evaluation is full of lies. He said it calmly and in an enclosed space in a conference
14 15 16 17 18 19 20	<ul> <li>Q. And who did you get calls form?</li> <li>A. I didn't get the call. Calls came into the</li> <li>Human Resources.</li> <li>Q. Do you know who called?</li> <li>A. No. I do not. I don't recall to be honest</li> <li>with you.</li> </ul>	15 16 17 18 19 20 21	You're saying you're saying strike that.  What if Mr. Frazier was calm and they were in a conference room and he said, You're lying on this evaluation. This evaluation is full of lies. He said it calmly and in an enclosed space in a conference room, would you have terminated Mr. Frazier at that
14 15 16 17 18 19 20 21	<ul> <li>Q. And who did you get calls form?</li> <li>A. I didn't get the call. Calls came into the</li> <li>Human Resources.</li> <li>Q. Do you know who called?</li> <li>A. No. I do not. I don't recall to be honest</li> <li>with you.</li> <li>Q. Do you know who got the call?</li> <li>A. Someone in the HR. I don't know.</li> </ul>	15 16 17 18 19 20 21 22	You're saying you're saying strike that.  What if Mr. Frazier was calm and they were in a conference room and he said, You're lying on this evaluation. This evaluation is full of lies. He said it calmly and in an enclosed space in a conference room, would you have terminated Mr. Frazier at that point?
14 15 16 17 18 19 20 21 22	<ul> <li>Q. And who did you get calls form?</li> <li>A. I didn't get the call. Calls came into the</li> <li>Human Resources.</li> <li>Q. Do you know who called?</li> <li>A. No. I do not. I don't recall to be honest with you.</li> <li>Q. Do you know who got the call?</li> <li>A. Someone in the HR. I don't know.</li> <li>Q. So let's go about it again.</li> </ul>	15 16 17 18 19 20 21 22 23	You're saying you're saying strike that.  What if Mr. Frazier was calm and they were in a conference room and he said, You're lying on this evaluation. This evaluation is full of lies. He said it calmly and in an enclosed space in a conference room, would you have terminated Mr. Frazier at that point?  MR. GOLDSTEIN: Objection. Calls for
14 15 16 17 18 19 20 21 22 23	<ul> <li>Q. And who did you get calls form?</li> <li>A. I didn't get the call. Calls came into the</li> <li>Human Resources.</li> <li>Q. Do you know who called?</li> <li>A. No. I do not. I don't recall to be honest</li> <li>with you.</li> <li>Q. Do you know who got the call?</li> <li>A. Someone in the HR. I don't know.</li> </ul>	15 16 17 18 19 20 21 22	You're saying you're saying strike that.  What if Mr. Frazier was calm and they were in a conference room and he said, You're lying on this evaluation. This evaluation is full of lies. He said it calmly and in an enclosed space in a conference room, would you have terminated Mr. Frazier at that point?

72 70 that he was yelling out loud in front of other people, he picks up and walks out and refuses to sign it? Or did Mr. Frazier admit that to you as well? are we talking about just those words being said? I don't recall. I object to the form of the question. 3 Q. He did not admit that to you, correct? Answer it if you can answer it. But I think 4 4 A. I didn't say that. I said I don't recall. 5 the question is absolutely inappropriate. 5 Q. I assume that if he said that to you, that 6 Q. Go ahead, you can answer my question. 6 would have been something that you would have noted in 7 If Mr. Frazier had told Mr. Newton that his 7 your notes? evaluation was full of lies, but said that calmly and If Mr. Frazier said, yes, I told him that he 9 said it in a conference room where nobody else could was lying, and I admit that I did so loudly in front of hear, would you have terminated Mr. Frazier? 10 10 other people, you would have probably noted that in 11 11 your notes, correct? Q. So you're saying what caused you to terminate 12 12 A. Yeah. That could be. 13 him is the fact that he said those things, and he said 13 Q. The fact that it's not in your notes, the it loudly and in an open space where other people could 14 probability is that it never occurred, right? 15 15 hear? A. No. You're asking me to speculate here. 16 A. It was his behavior. 16 Q. They're your notes and you were at the 17 Q. When you say, "his behavior", do you mean 17 meeting. So I'm asking you, the fact that there's no saying those things, saying it loudly and saying it in 18 18 notation in your notes that Mr. Frazier conceded or 19 an open space? 19 admitted that he spoke inappropriately in a loud voice 20 A. Yes. And saying it in front of other 20 in front of other people to Mr. Newton, that would 21 21 employees? probably indicate that that's not something that Mr. Q. You didn't talk to any other employees before 22 22 Frazier told you? 23 you terminated Mr. Frazier, right? 23 A. There is that possibility. 24 A. Spoke to Gary Newton. 24 Q. Did you have any qualms about terminating an 25 Q. Besides Mr. Newton. 25 71 employee who had recently filed an EEOC Charge simply You didn't talk to any third-party employees, 1 based on Mr. Newton's word that Mr. Frazier had acted any other employees, right? 2 loudly, spoken too loudly in front of other employees? 3 Mr. Frazier was talking to Gary Newton. You 3 4 A. No. didn't talk to anybody that overheard the conversation? 4 MR. ZATUCHNI: I don't have any other 5 A. No. 5 6 questions. Q. It was Gary Newton that told you that Mr. 6 MR. GOLDSTEIN: Couple of follow-ups. 7 Frazier had raised his voice and acted loudly? 7 CROSS-EXAMINATION BY MR. GOLDSTEIN: 8 A. On which day? 8 Q. I'm directing your attention to what's been 9 Q. On either one of those days. 9 marked DePrima 1. I'll ask you to direct your attention 10 A. Yes. Both days. 10 to the very last page, which is Bates stamped 855. I Q. No other employee told you that before you 11 11 direct your attention to the middle of the second 12 terminated Mr. Frazier, correct? 12 paragraph where you write, "KF then asked what was the 13 A. That is correct. 13 reason for his termination." 14 Q. So your information about Mr. Frazier's 14 You then wrote, I told KF that I had given 15 behavior came solely from Mr. Newton and no other 15 that to him on 5/11 and KF had written it down. 16 source? 16 Does that refresh your recollection as to 17 A. Kevin said he used those words still. 17 when you handed him the card on which he wrote the Q. Besides what you claim Mr. Frazier told you, 18 information there? no other employees told you what had transpired? 19 19 20 A. Yes, I do. A. I don't believe so. 20 O. What is your recollection? 21 Q. Do you claim that Mr. Frazier also admitted 21 A. That I had given him my business card prior 22 to raising his voice and yelling? 22 to him asking for the reason for the termination. 23 A. Yeah. He said he was upset with the review on 23 Q. Do you recall what he did with that business 24 24 both days. card after he wrote on the back of it? Q. When he said, You're lying on this review, 25

74 76 1 A. I can't tell you if he put it in his jacket 1 right? 2 pocket or pants pocket, but he left my office with it. 2 So the comment you're saying -- this is a 3 Q. And when he wrote down the reason that you 3 comment -- the comment. "This wasn't the place for told him why he was being fired, did you take any 4 him" was a comment that Frazier made on Friday, that's 5 objection to him writing it down? 5 what you were writing there? A. No. 6 6 A. Yes. It's a comment that Frazier made on May 7 Q. Directing your attention to the incident 7 8th during his performance appraisal. 8 about which you testified involving Reid Kolowski. 8 Q. I misread it. 9 During any of the meetings at any time 9 And based on that comment, you're saying that 10 concerning the Kolowski situation, did you have any 10 he's not happy with Bed Bath & Beyond, correct? 11 discussions with Mr. Frazier? 11 A. Yes. I'm sorry. 12 A. Yes. 12 MR. ZATUCHNI: Okay. I got it. 13 Q. At any time during any of the discussions, 13 Thank you. 14 did Mr. Frazier ever allege that Mr. Kolowski used any 14 (Deposition of Paul DePrima concluded at 1:12 15 ratial epithets? 15 p.m.) 16 A. No. 16 17 Q. Lastly, if I could address you attention to 17 18 your notes of May 11, 2009. Page BBB slash 851. I 18 direct your attention to the second paragraph that 19 19 20 starts with, "I told KF that based on his comment that 20 21 he had shared with GN on Friday during his review, that 21 22 this wasn't the place for him." 22 23 Isn't it your testimony that in that 23 24 paragraph that you were recording what you told Mr. 24 25 Frazier or what Mr. Frazier had told Gary Newton? 25 75 77 1 Strike that. 1 CERTIFICATE 2 The sentence says, "I told KF that based on 2 3 his comment that he shared with GN on Friday", and you 3 I, JACQUELINE MATHEWSON a Certified Court 4 Reporter, License Number XI01404, and Notary Public of 5 What was the comment that you understood Mr. the State of New Jersey, do hereby certify that prior 6 Frazier had shared with Gary Newton on Friday? to the commencement of the examination, PAUL DEPRIMA 7 A. That Bed Bath & Beyond was not the place for was duly sworn by me to testify to the truth, the whole 8 truth and nothing but the truth. 9 Q. It's your understanding that Mr. Frazier had 9 I DO FURTHER CERTIFY that the foregoing is a told that to Mr. Newton, correct? 10 10 true and accurate transcript of the testimony as taken 11 A. Correct. 11 stenographically by and before me at the time, place 12 MR. GOLDSTEIN: Thank you. 12 and on the date hereinbefore set forth. 13 I DO FURTHER CERTIFY that I am neither a I have no further questions. 13 MR. WILCK: I don't have any questions. 14 14 relative nor employee nor attorney nor counsel of any 15 MR. ZATUCHNI: I just have a quick follow-up. 15 of the parties to this action, and that I am neither a REDIRECT EXAMINATION BY MR. ZATUCHNI: 16 relative nor employee of such attorney or counsel, and 17 Q. Going back to what you wrote there on May 8, 17 that I am not financially interested in the action. 18 and May 11th, 2009. 18 19 So I, essentially, me, David Zatuchni, I 19 20 misread this. 20 21 You write, I told KF, based on his comment 21 22 that he shared with GN on Friday during his review, 22 Notary Public of the State of No 23 that this wasn't the place for him. He's obviously not 23 My Commission expires 3/18/2013 24 happy with us. 24 Dated: January 11, 2012 25 You said that I misread that grammatically, 25

## Exhibit R

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UNITED STATES DISTRICT COURT
1
                  DISTRICT OF NEW JERSEY
2
                  CIVIL ACTION NO.: 2:10-CV-5398
3
   KEVIN FRAZIER,
4
             Plaintiff,
5
                                 : CIVIL ACTION
            -17-
6
   BED BATH & BEYOND, BED BATH & :
7
   BEYOND, INC. and GARY NEWTON, :
8
             Defendants.
9
              _____X
10
        Computer-aided transcript of the Telephonic
11
    deposition testimony of DAVID RUBIN taken
12
    stenographically in the above-entitled matter before
13
    JACQUELINE MATHEWSON, a Certified Court Reporter,
14
    License No. XI01404, and Notary Public of the State of
15
    New Jersey, at the Law Offices of PROSKAUER ROSE, LLP,
16
    One Newark Center, Newark, New Jersey 07102 on Thursday,
17
    December 15, 2011, commencing at 2:04 p.m.
18
               GUY J. RENZI & ASSOCIATES
19
       CERTIFIED COURT REPORTERS & VIDEOGRAPHERS
20
             GOLDEN CREST CORPORATE CENTER
21
           2277 STATE HIGHWAY #33, SUITE 410
22
               TRENTON, NEW JERSEY 08690
23
     TEL: (609) 989-9199 TOLL FREE: (800) 368-7652
24
                www.renziassociates.com
25
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2 ZAT 3 BY:				l l			
2 ZAT 3 BY:		2		4			
2 ZAT 3 BY:	PEARANCES:	***************************************	1	(Witness Telephonically.)			
3 BY:	UCHNI & ASSOCIATES, LLC	W. C. S.	2	DAVID RUBIN, 22317 Collington Drive, Bocca			
	BY: DAVID ZATUCHNI, ESQ.			Raton, Florida; having been first duly sworn, testified			
4 4	287 South Main Street - Route 29		3 4	as follows:			
5 T	• • • • • • • • • • • • • • • • • • • •		5	DIRECT EXAMINATION BY MR. ZATUCHNI:			
	ambertville, New Jersey 08530	***************************************	6	Q. Good afternoon, Mr. Rubin.			
	el: (609) 243-0300	5,500	7	For the record, again, this is David			
	-mail: dzatuchniassociates.com	***************************************	8	Zatuchni. I'm an attorney. I represent a person named			
	rneys for the Plaintiff.	200	9	Kevin Frazier in a lawsuit that he has pending against			
9	CILLIED DOCE LID	arènciere.	10	Bed Bath & Beyond. And we're taking your deposition			
	SKAUER ROSE, LLP	***************************************	11	today remotely as part of that lawsuit.			
	MARVIN M. GOLDSTEIN, ESQ.		12	Just for the record, I'm sitting here in New			
	one Newark Center, 18th Floor	***************************************		Jersey at the offices in Proskauer in Newark.			
	lewark, New Jersey 07102		13	And you're where? In Bocca Raton, Florida?			
	fel: (973) 274-3200	our and referen	14	•			
I	-mail: mmgoldstein@proskauer.com	L	15	Mr. Rubin? Are you there?			
I .	rneys for the Defendants Bed Bath	************	16	A. Yes, I am.			
	eyond and Gary Newton.	up) aprileason	17	Q. Can you speak up a little bit or speak into			
18		esada nocidades	18	the microphone.  Have you ever had your deposition taken			
1	BATH & BEYOND	***************************************	19	•			
	MICHAEL H. WILCK, ESQ.	Table 1	20	before?			
	50 Liberty Avenue		21	A. I haven't.			
22 U	nion, New Jersey 07063		22	Q. I'll just be asking you factual questions.			
	el: (908) 688-0888		23	Your obligation is simply to answer my			
24 E	-mail: michael.wilck@bedbath.com		24	questions as truthfully and completely as you can.			
25 Bed	Bath & Beyond Corporate Attorney.	,	25	If you don't understand one of my questions,			
		3		5			
1	INDEX		1	please let me know and I'll rephrase my question, I'll			
	INDLA		2	restate it, I'll do whatever I need to do to make sure			
2 37/17	NESS PAGE		3	my meaning is clear to you. If you don't do that, we do			
ł	/ID RUBIN		4	assume for the record that you understood my question			
1		4	5	when you answered it.			
		21	6	Do you understand that?			
6 E	xammation by Mr. Goldstelli	<b>Z</b> 1	7	A. I do.			
/			8	Q. Can you make sure that you keep your voice			
8	EVIIDITE		9	loud, please so the court reporter on this side can			
9	EXHIBITS		10	hear what you're saying and record it properly.			
10	DECEMBEION DACE		11	If you need to take a break at any time,			
11 ID	DESCRIPTION PAGE		12	please just let me know and we'll take a break.			
12	AIO EVIHDITO WEDE MADIZEDA		13	Although, I don't think your deposition will take a			
13	(NO EXHIBITS WERE MARKED.)		13	very long time.			
			1	Are you currently employed by Data Futures?			
14	DEOHE CTC		15	A. Yes, I am.			
15	REQUESTS		16	A. res, ram. Q. How long have you been employed by Data			
15 16		DE \	17				
15 16 17	A SO MODELLE DECLERONS MINET 3 CL		18	Futures?			
15 16 17 18	(NO FORMAL REQUESTS WERE MA	WE.)	1 1 ^	A Thirteen France			
15 16 17 18 19	(NO FORMAL REQUESTS WERE MA	WE.)	19	A. Thirteen years.			
15 16 17 18 19 20	(NO FORMAL REQUESTS WERE MA	WE.)	20	Q. Are you like an officer			
15 16 17 18 19 20 21	(NO FORMAL REQUESTS WERE MA	DE.)	20 21	Q. Are you like an officer What's your position within Data Future?			
15 16 17 18 19 20	(NO FORMAL REQUESTS WERE MA	DE.)	20 21 22	<ul><li>Q. Are you like an officer</li><li>What's your position within Data Future?</li><li>A. CEO, President, Owner.</li></ul>			
15 16 17 18 19 20 21	(NO FORMAL REQUESTS WERE MA	(DE.)	20 21 22 23	<ul><li>Q. Are you like an officer What's your position within Data Future?</li><li>A. CEO, President, Owner.</li><li>Q. CEO, President and Owner. Okay.</li></ul>			
15 16 17 18 19 20 21 22	(NO FORMAL REQUESTS WERE MA	DE.)	20 21 22	<ul> <li>Q. Are you like an officer What's your position within Data Future?</li> <li>A. CEO, President, Owner.</li> <li>Q. CEO, President and Owner. Okay. Besides yourself, how many other employees</li> </ul>			

Guy J. Renzi & Associates (609) 989-9199 www.renziassociates.com

	8
6	
1 A. Two.	1 but I know he is in charge of the Database Group at Bed
2 Q. What are their names?	2 Bath & Beyond.
3 A. Jose Minards and myself.	3 Q. Was that his first position when he first
4 Q. What is Data Futures in the business of?	4 contacted you about hiring your company for database
5 What do you guys do?	5 administration services?
6 A. Database consulting.	6 A. I'm not sure.
7 Q. You provide database consulting services to	7 Q. Has he been the person who has negotiated the
8 Bed Bath & Beyond?	8 contracts with you at Bed Bath & Beyond?
9 A. Yes, we do.	9 A. He's been one of the people.
10 Q. For how long have you done that?	10 Q. Who else have you negotiated these contracts?
11 A. To the best of my recollection, approximately	11 A. Everything.
12 12 years.	12 Q. Are these contracts annual or are they
Q. What database services do you provide to Bed	13 renewed on a regular basis?
14 Bath & Beyond?	14 A. It's automatic renewing at the end of each
15 A. Maintenance, administration, programming,	15 yearly contract.
16 on-call emergency support, general guidance.	16 Q. Do the rates change every year?
17 Q. Do you provide that with something called SQI	
18 Server?	18 requires them to be changed.
19 A. We provide it for SQL Server and some of	Q. Does Data Futures have any other clients or
20 those features for or Oracle.	20 customers besides Bed Bath & Beyond?
Q. Do you have a contract with Bed Bath &	21 A. Yes, we do.
22 Beyond?	Q. Just give me a general sense, let's say right
23 A. Yes.	23 now, approximately what percentage of Data Futures'
24 Q. Okay.	24 revenue comes in Bed Bath & Beyond?
as III and a control sings the very	25 A. I would guess 10 percent.
25 Have you had a contract since the very	
	7 9
	7 9
1 beginning, since about 12 years ago?	7 Q. How about in the year 2009-2008, would that
<ul><li>1 beginning, since about 12 years ago?</li><li>2 A. Yes.</li></ul>	7 1 Q. How about in the year 2009-2008, would that 2 be the same?
<ol> <li>beginning, since about 12 years ago?</li> <li>A. Yes.</li> <li>Q. How did you come about to first develop a</li> </ol>	7 1 Q. How about in the year 2009-2008, would that 2 be the same? 3 A. 2009-2008, I would have to look at the
<ol> <li>beginning, since about 12 years ago?</li> <li>A. Yes.</li> <li>Q. How did you come about to first develop a</li> <li>business relationship with Bed Bath &amp; Beyond? Just</li> </ol>	7 1 Q. How about in the year 2009-2008, would that 2 be the same? 3 A. 2009-2008, I would have to look at the 4 records. I don't have it in front of me so I don't know
<ol> <li>beginning, since about 12 years ago?</li> <li>A. Yes.</li> <li>Q. How did you come about to first develop a</li> <li>business relationship with Bed Bath &amp; Beyond? Just</li> <li>explain to me the process of how they first came to</li> </ol>	7 1 Q. How about in the year 2009-2008, would that 2 be the same? 3 A. 2009-2008, I would have to look at the 4 records. I don't have it in front of me so I don't know 5 time frames for invoicing off the top of my head.
<ol> <li>beginning, since about 12 years ago?</li> <li>A. Yes.</li> <li>Q. How did you come about to first develop a</li> <li>business relationship with Bed Bath &amp; Beyond? Just</li> <li>explain to me the process of how they first came to</li> <li>hire your company to provide the services?</li> </ol>	7  1 Q. How about in the year 2009-2008, would that 2 be the same? 3 A. 2009-2008, I would have to look at the 4 records. I don't have it in front of me so I don't know 5 time frames for invoicing off the top of my head. 6 Q. But you think that right about now it's 10
<ol> <li>beginning, since about 12 years ago?</li> <li>A. Yes.</li> <li>Q. How did you come about to first develop a</li> <li>business relationship with Bed Bath &amp; Beyond? Just</li> <li>explain to me the process of how they first came to</li> <li>hire your company to provide the services?</li> <li>A. They contacted us, and we entered into a</li> </ol>	7  1 Q. How about in the year 2009-2008, would that 2 be the same? 3 A. 2009-2008, I would have to look at the 4 records. I don't have it in front of me so I don't know 5 time frames for invoicing off the top of my head. 6 Q. But you think that right about now it's 10 7 percent?
<ol> <li>beginning, since about 12 years ago?</li> <li>A. Yes.</li> <li>Q. How did you come about to first develop a</li> <li>business relationship with Bed Bath &amp; Beyond? Just</li> <li>explain to me the process of how they first came to</li> <li>hire your company to provide the services?</li> <li>A. They contacted us, and we entered into a</li> <li>contractual agreement to assist them and have done so</li> </ol>	1 Q. How about in the year 2009-2008, would that 2 be the same? 3 A. 2009-2008, I would have to look at the 4 records. I don't have it in front of me so I don't know 5 time frames for invoicing off the top of my head. 6 Q. But you think that right about now it's 10 7 percent? 8 A. Correct.
<ol> <li>beginning, since about 12 years ago?</li> <li>A. Yes.</li> <li>Q. How did you come about to first develop a</li> <li>business relationship with Bed Bath &amp; Beyond? Just</li> <li>explain to me the process of how they first came to</li> <li>hire your company to provide the services?</li> <li>A. They contacted us, and we entered into a</li> <li>contractual agreement to assist them and have done so</li> <li>ever since.</li> </ol>	Q. How about in the year 2009-2008, would that be the same?  A. 2009-2008, I would have to look at the records. I don't have it in front of me so I don't know time frames for invoicing off the top of my head.  Q. But you think that right about now it's 10 percent?  A. Correct.  Q. How long have you personally been located in
<ol> <li>beginning, since about 12 years ago?</li> <li>A. Yes.</li> <li>Q. How did you come about to first develop a</li> <li>business relationship with Bed Bath &amp; Beyond? Just</li> <li>explain to me the process of how they first came to</li> <li>hire your company to provide the services?</li> <li>A. They contacted us, and we entered into a</li> <li>contractual agreement to assist them and have done so</li> <li>ever since.</li> <li>Q. Do you remember who it was that contacted you</li> </ol>	1 Q. How about in the year 2009-2008, would that 2 be the same? 3 A. 2009-2008, I would have to look at the 4 records. I don't have it in front of me so I don't know 5 time frames for invoicing off the top of my head. 6 Q. But you think that right about now it's 10 7 percent? 8 A. Correct. 9 Q. How long have you personally been located in 10 Bocca Raton, Florida?
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1 beginning, since about 12 years ago? 2 A. Yes. 3 Q. How did you come about to first develop a 4 business relationship with Bed Bath & Beyond? Just 5 explain to me the process of how they first came to 6 hire your company to provide the services? 7 A. They contacted us, and we entered into a 8 contractual agreement to assist them and have done so 9 ever since. 10 Q. Do you remember who it was that contacted you 11 from Bed Bath & Beyond? 12 A. David Ortiz. 13 Q. Did you know Mr. Ortiz prior to him 14 contacting you with respect to providing services to 15 Bed Bath & Beyond? 16 A. No. 17 Q. Do you know how he found you? 18 A. To the best of my recollection, it was 19 word-of-mouth. 20 Q. So you have known Mr. Ortiz for the last 12 21 years? 22 A. Yes.	1 Q. How about in the year 2009-2008, would that 2 be the same? 3 A. 2009-2008, I would have to look at the 4 records. I don't have it in front of me so I don't know 5 time frames for invoicing off the top of my head. 6 Q. But you think that right about now it's 10 7 percent? 8 A. Correct. 9 Q. How long have you personally been located in 10 Bocca Raton, Florida? 11 A. Nineteen years. 12 Q. Have you ever worked out physically from the 13 Union, New Jersey location at the Bed Bath & Beyond? 14 A. I've never been in Union, New Jersey at all. 15 Q. Have you ever worked at any location for Bed 16 Bath & Beyond on site, so to speak? 17 A. No, I haven't. 18 Q. So you work remotely from Florida? 19 A. Correct. 20 Q. At some point in time 21 Do you know who Kevin Frazier is? 22 A. Yes, I did.
1 beginning, since about 12 years ago? 2 A. Yes. 3 Q. How did you come about to first develop a 4 business relationship with Bed Bath & Beyond? Just 5 explain to me the process of how they first came to 6 hire your company to provide the services? 7 A. They contacted us, and we entered into a 8 contractual agreement to assist them and have done so 9 ever since. 10 Q. Do you remember who it was that contacted you 11 from Bed Bath & Beyond? 12 A. David Ortiz. 13 Q. Did you know Mr. Ortiz prior to him 14 contacting you with respect to providing services to 15 Bed Bath & Beyond? 16 A. No. 17 Q. Do you know how he found you? 18 A. To the best of my recollection, it was 19 word-of-mouth. 20 Q. So you have known Mr. Ortiz for the last 12 21 years? 22 A. Yes. 23 Q. What's your understanding of who Mr. Ortiz is	1 Q. How about in the year 2009-2008, would that 2 be the same? 3 A. 2009-2008, I would have to look at the 4 records. I don't have it in front of me so I don't know 5 time frames for invoicing off the top of my head. 6 Q. But you think that right about now it's 10 7 percent? 8 A. Correct. 9 Q. How long have you personally been located in 10 Bocca Raton, Florida? 11 A. Nineteen years. 12 Q. Have you ever worked out physically from the 13 Union, New Jersey location at the Bed Bath & Beyond? 14 A. I've never been in Union, New Jersey at all. 15 Q. Have you ever worked at any location for Bed 16 Bath & Beyond on site, so to speak? 17 A. No, I haven't. 18 Q. So you work remotely from Florida? 19 A. Correct. 20 Q. At some point in time 21 Do you know who Kevin Frazier is? 22 A. Yes, I did. 23 Q. Have you ever met Kevin Mr. Frazier
1 beginning, since about 12 years ago? 2 A. Yes. 3 Q. How did you come about to first develop a 4 business relationship with Bed Bath & Beyond? Just 5 explain to me the process of how they first came to 6 hire your company to provide the services? 7 A. They contacted us, and we entered into a 8 contractual agreement to assist them and have done so 9 ever since. 10 Q. Do you remember who it was that contacted you 11 from Bed Bath & Beyond? 12 A. David Ortiz. 13 Q. Did you know Mr. Ortiz prior to him 14 contacting you with respect to providing services to 15 Bed Bath & Beyond? 16 A. No. 17 Q. Do you know how he found you? 18 A. To the best of my recollection, it was 19 word-of-mouth. 20 Q. So you have known Mr. Ortiz for the last 12 21 years? 22 A. Yes.	1 Q. How about in the year 2009-2008, would that 2 be the same? 3 A. 2009-2008, I would have to look at the 4 records. I don't have it in front of me so I don't know 5 time frames for invoicing off the top of my head. 6 Q. But you think that right about now it's 10 7 percent? 8 A. Correct. 9 Q. How long have you personally been located in 10 Bocca Raton, Florida? 11 A. Nineteen years. 12 Q. Have you ever worked out physically from the 13 Union, New Jersey location at the Bed Bath & Beyond? 14 A. I've never been in Union, New Jersey at all. 15 Q. Have you ever worked at any location for Bed 16 Bath & Beyond on site, so to speak? 17 A. No, I haven't. 18 Q. So you work remotely from Florida? 19 A. Correct. 20 Q. At some point in time 21 Do you know who Kevin Frazier is? 22 A. Yes, I did.

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Q. At some point in time he was a database

2 administrator for Bed Bath & Beyond on the SQL Server,

3 correct?

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- 4 A. Correct.
- 5 Q. During that period of time, how often would
- 6 you interact with him on a daily or weekly basis?
  - I'd say on average one to two times per week.
  - Q. Would that be by e-mail or by phone?
- 9 A. Seventy-five percent by e-mail; twenty-five
- 10 percent by phone.
- Q. So you're saying that you would only talk to
- 12 him maybe once or twice a week on any given week?
- 13 A. On average.
- 14 Q. On average.
- 15 Can you give me a sense of the kind of
- 16 separation of the responsibilities that Data Futures
- 17 had with respect to the SQL Server, as opposed to Mr.
- 18 Frazier?

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6

- 19 A. I can't speak to any responsibilities that
- 20 Mr. Frazier had. That would be between he and his
- 21 lawyer. I can only discuss what my company does at Bed
- 22 Bath & Beyond.
- Q. Why don't you tell me what those
- 24 responsibilities were.
- 25 A. As I said before, it was to provide 24/7

- A. Correct.
  - Q. After sending the e-mail, what's the first
- 3 communication you had with anybody at Bed Bath & Beyond

12

13

- 4 regarding that e-mail?
  - A. A response from Mr. Frazier stating LMAO with
- 6 two exclamation points.
- 7 Q. Okay.
  - What's the next communication you had with
- 9 anybody from Bed Bath & Beyond regarding that e-mail?
  - A. David Ortiz calling me directly informing me
- 11 that Mr. Frazier -- there was an issue, I can't
- 12 remember exactly, but there was an issue with regard to
- 13 that e-mail, and Kevin Mr. Frazier receiving it.
- 14 Q. Do you recall approximately how much time
- 15 after you sent the e-mail and Mr. Frazier's getting the
- 16 e-mail that you spoke to Mr. Ortiz?
  - A. To the best of my recollection, no more than
- 18 72 hours, most likely less.
- 19 Q. So taking you through that conversation, what
- 20 did Mr. Ortiz tell you and what did you tell Mr. Ortiz?
- A. He mentioned Kevin receiving this e-mail. I
- 22 apologized profusely. I offered to fly up immediately
- 23 to Union, New Jersey and apologize in person to Mr.
- 24 Frazier. He said that that was not necessary. They are
- 25 handling this internally. And just that it is to be
- 11
- support, emergency support, programming,
- 2 administration, maintenance and general advice.
- 3 Q. And at some point you sent an e-mail to Mr.
- 4 Frazier that had an imagine -- well, we refer to it as
- 5 the Ghetto SpongeBob e-mail.
  - Do you know what I'm referring to?
- 7 A. Yes, I do.
- 8 Q. At some point in November of 2008, did you
- 9 send that to Mr. Frazier?
- 10 A. Accidentally.
- 11 Q. Who was the intended recipient of that
- 12 e-mail?
- 13 A. My sister-in-law.
- 14 Q. How did you get that image? I mean, how did
- 15 it come to you?
- 16 Did you create it?
- 17 A. No. I did not.
- 18 O. Do you remember how it came to you?
- 19 A. It was forwarded to me through any one of
- 20 unrecollected friends who forward jokes and funny stuff
- 21 among ourselves.
- 22 Q. And you were trying to send that to your
- 23 sister-- sister-in-law?
- 24 A. Correct.
- 25 Q. And it went to Mr. Kevin Frazier?

- 1 distinctly avoided sending any personal materials.
- Q. Did Mr. Ortiz suggest that you call Mr.
- 3 Frazier and apologize?
- 4 A. He did not suggest that.
  - Q. Did Mr. Ortiz suggest that you write to Mr.
- 6 Frazier, either by e-mail or some other way
- 7 apologizing?

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- A. He did not suggest that.
- 9 Q. Did you suggest that? Either one of those
- 10 two options?
- 11 A. I think when I offered to fly up or do
- 12 whatever is necessary to make sure the situation was
- 13 made good. It was an accident. I was profusely sorry.
- 14 It covered everything that they would have wanted me to
- 15 do.
- 16 Q. What's the next communication that you had
- 17 from anybody also at Bed Bath & Beyond regarding that
- 18 e-mail?
- 19 A. I believe some period later, Mr. Ortiz,
- 20 again, contacted me to reiterate their policy regarding
- 21 sending personal material.
- Q. Do you know when that was?
- 23 A. Not exactly.
- Q. What's the text communication after that?
- 25 MR. GOLDSTEIN: About the e-mails?

### Exhibit S

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UNITED STATES DISTRICT COURT
1
                     DISTRICT OF NEW JERSEY
2
                  CIVIL ACTION NO.: 2:10-CV-5398
3
   KEVIN FRAZIER,
4
             Plaintiff,
5
                            : CIVIL ACTION
            -v-
6
   BED BATH & BEYOND, BED BATH & :
7
   BEYOND, INC. and GARY NEWTON, :
8
             Defendants.
9
    _____X
10
        Computer-aided transcript of the deposition
11
   testimony of ROBERT AQUILINO taken stenographically in
12
   the above-entitled matter before JACQUELINE MATHEWSON,
13
   a Certified Court Reporter, License No. XI01404, and
14
   Notary Public of the State of New Jersey, at the
15
   offices of PROSKAUER ROSE, LLP, One Newark Center,
16
   Newark, New Jersey 07102 on Thursday, March 15, 2012,
17
    commencing at 10:48 a.m.
18
                  GUY J. RENZI & ASSOCIATES
19
           CERTIFIED COURT REPORTERS & VIDEOGRAPHERS
20
                 GOLDEN CREST CORPORATE CENTER
21
               2277 STATE HIGHWAY #33, SUITE 410
22
                   TRENTON, NEW JERSEY 08690
23
         TEL: (609) 989-9199 TOLL FREE: (800) 368-7652
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                    www.renziassociates.com
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1	APPEARANCES:	1	INDEX
2	ZAWIGIDH A AGGOGLAWDS II G	2	Marina Profe
3	ZATUCHNI & ASSOCIATES, LLC	3	WITNESS PAGE
4   5	BY: DAVID ZATUCHNI, ESQ. 287 South Main Street - Route 29	4 5	ROBERT AQUILINO Direct Examination by Mr. Zatuchni 5, 37
6	Lambertville, New Jersey 08530	6	Direct Examination by Mr. Zatuchni 5, 37 Cross-Examination by Mr. Goldstein 35
7	Tel: (609) 243-0300	7	Cross-Examination by Wr. Goldstein 33
8	E-mail: davidz@zatuchniassociates.com	8	
9	Attorneys for the Plaintiff.	9	EXHIBITS
10		10	
11		11	ID DESCRIPTION PAGE
12	PROSKAUER ROSE, LLP	12	
13	BY: MARVIN M. GOLDSTEIN, ESQ.	13	(NO EXHIBITS WERE MARKED.)
14	One Newark Center, 18th Floor	14	
15	Newark, New Jersey 07102	15	DEOILE CT C
16   17	Tel: (973) 274-3200 E-mail: mmgoldstein@proskauer.com	16 17	REQUESTS
18	Attorneys for the Defendants Bed Bath &	18	(NO FORMAL REQUESTS WERE MADE.)
19	Beyond and Gary Newton.	19	
20	Deficient and early 1.0 week.	20	
21		21	
22		22	
23		23	
24		24	
25		25	
İ	3		5
1	APPEARANCES:	1	ROBERT AQUILINO, 267 Phillips Terrace,
2		2	Union, New Jersey 08872; having been duly sworn,
3	BED, BATH & BEYOND, IN-HOUSE COUNSEL	3	testified as follows:
4	BY: MICHAEL H. WILCK, ESQ.	4	DIRECT EXAMINATION BY MR. ZATUCHNI:
5	650 Liberty Avenue	- 5	Q. I'm sorry, what was your first name?
6 7	Union, New Jersey 07063	6	A. Rob. Q. Rob.
8	Tel: (908) 688-0888 E-mail: michael.wilck@bedbath.com	7 8	What was your last name?
9	In-house Counsel for Bed, Bath & Beyond.	9	.A. Aquilino.
10		10	Q. Aquilino?
11		11	A. Yes.
12		12	Q. All right, Mr. Aquilino.
13		13	My name is David Zatuchni, I'm an attorney,
14		14	and I represent Kevin Frazier in a lawsuit that he has
15		15	pending against Bed, Bath & Beyond, and we're here to
16		16	take your deposition today as part of this lawsuit.  Have you ever been deposed before?
18		18	A. I have not.
19		19	Q. So a deposition is, essentially, just a
20		20	question and answer session. I'll be asking you
21		21	questions. Your obligation is simply to answer my
22		22	questions as truthfully an completely as you can.
23		23	Do you understand that?
24		24	A. Yes.
25		25	Q. You have been placed under oath by the court

Guy J. Renzi & Associates (609) 989-9199 www.renziassociates.com

1 Lisa DelRay. 2 A. Right. 3 Q. Do you know who that is? 4 A. Yes. 5 Q. Did she ever go to any of these dinners with you guys at Steak On A Stone? 7 A. No. 8 Q. Did she participate in the paintbell? 9 A. She did not. 9 Q. Did she participate in any of these holiday 1 dinners that you mentioned? 1 A. No. 1 Q. Did she participate in any of these holiday 1 dinners that you mentioned? 1 A. No. 1 Q. How many holiday dinners were there all 1 together? 1 A. No. 2 Q. What holiday was that? 1 Q. A A Stone. 2 Q. What holiday was that? 1 A. Yes. 2 Q. Where was that dinner either? 2 A. A So. 2 Q. Where was that dinner either? 2 A. No. 2 Q. Where was that dinner either? 3 A. Soane kind of restaurant, I assume? 4 A. No that I recall, no. 5 Q. Left's go to whin the work place. 5 You said that you ate lunch with Mr. Frazier, any of these nights out that you can excell? 4 A. No that I recall, no. 5 Q. Was there a caleteria within the facility 1 Q. So you went our 1 Q. Did you ever so any e-mails from Lisa DelRay 1 Hat you floogen maght be considered offensive 1 racially? 2 A. No. 3 Q. Was there a caleteria within the facility 2 A. No. 4 A. Yes. 5 Q. How often would you eat at the cafereria? 5 A. Yes. 6 Q. How often would you eat at the cafereria? 7 A. Probably never. 7 A. Probably never. 8 Q. How often would you eat at the cafereria? 9 A. No. 9 Q. How often would you eat at the cafereria? 1 A. No. 1 A. No. 1 A. No. 2 Q. Was there a caleteria within the facility 2 A. No. 9 Q. How often would you eat at the cafeeria? 1 A. No. 1 A. No. 1 A. No. 2 A. No. 2 A. No was there a caleteria w	1	10		20
2 A. Right. 3 Q. Do you know who that is? 4 A. Yes. 5 Q. Did she ever go to any of these dinners with 5 you guys at Steak On A Stone? 7 A. No. 8 Q. Did she participate in the paintball? 9 A. She did not. 10 Q. Did she participate in any of these holiday dinners that you mentioned? 11 Q. Did she participate in any of these holiday dinners that you mentioned? 12 A. No. 13 Q. How many holiday dinners were there all together? 14 together? 15 A. Just one. 16 Q. Just one? 17 A. Yes. 18 Q. What holiday was that? 19 A. Christmas, I think. You know, around then. 20 Q. And she wasn't at that dinner either? 21 A. No. 22 Q. Where wasn't at that dinner either? 22 A. Solar DiMingo. 23 A. Solar DiMingo. 24 Q. Some kind of restaurant, I assume? 25 A. Portuguuse, yes. 29 Q. Were Lisa DelRay at any of the these functions when you were out with Mr. Frazier, any of these nights out that you can recall? 4 A. No that I recall, no. 5 Q. Let's go to within the work place. 6 You said that you are luench with Mr. Frazier hike two or three times a week? 8 A. Yes. 9 Q. Where did you mostly cat lunch? 10 Q. Was there a cafeteria within the facility itself? 11 Q. Soy on went out? 12 A. Out. 13 Q. Was there a cafeteria within the facility itself? 14 isself? 15 A. Yes. 16 Q. How often would you eat at the cafeteria? 17 A. Probably never. 18 A. Yes. 19 Q. Where did you mostly cat lunch? 20 A. No ductor recall like two or three times a week? 21 A. No. 22 Q. Where did you mostly cat lunch? 23 Limch? 24 A. No. 25 Q. Let's go to within the work place. 26 You said that you are lunch with Mr. Frazier, any of these nights 27 A. Probably never. 28 A. Yes. 29 Q. Where did you mostly cat lunch? 29 Q. Was dere a cafeteria within the facility itself? 20 A. No dorn trecall Mr. Frazier going down and cating at the luncheonetts? 21 A. No. 22 Q. Was there like a group that would generally that the cevel dany e-mails from Lisa DelRay that the found to be cairing at the luncheonetts? 20 Q. Do you remember approximately when that was?			***************************************	
3   Ike going, and that would vary from time to time. 4   A. Yes. 5   Q. Did she ever go to any of these dinners with 5   you guys at Steak On A Stone? 7   A. No. 8   Q. Did she participate in the paintball? 9   A. She did not. 10   Q. Did she participate in any of these holiday of the see that you mentioned? 12   A. No. 13   Q. How many holiday dinners were there all together? 14   together? 15   A. Yes. 16   Q. Just one. 17   A. Yes. 18   Q. What holiday was that? 19   A. Christmas, I think You know, around then. Q. And she wasn't at that dinner either? 21   A. No. 22   Q. Where was that dinner held? 23   A. Solar DiMingo. 24   Q. So you not own? 16   Q. Did she participate in any of these holiday of these holiday of these holiday of these holiday of the seemal, but not so much — an e-mail linked in type thing. 19   A. Trough like e-mail, but not so much — an e-mail linked in type thing. 11   Q. How often would she go to lunch with you and 12   Kevin? 12   A. No. 13   Q. How often would she go to lunch with you guys and you went to lunch with him three or four times a week? 14   Q. How often would have go to lunch with you guys and you went to lunch with him three or four times a week? 15   Q. What holiday was that? 16   Q. Was Lisa DelRay at any of the these functions a week? 17   Q. Was Lisa DelRay at any of the these functions a week? 18   Q. Was Lisa DelRay at any of the sen lights out that you can recall? 19   Q. Was Lisa DelRay at any of the sen lights out that you can recall? 16   Q. Day ou were out with Mr. Frazier, any of these nights out that you can recall? 19   Q. Was Lisa DelRay at any of the sen lights out that you can recall? 19   Q. Was dere a cafeteria within the work place. 19   Q. Was dere a cafeteria within the facility itself? 19   A. Ryes. 10   Q. Day ou were out with Mr. Frazier, any of these nights out that you over year any e-mails from Lisa DelRay that depicted inages of African Americans? 19   A. Yes. 10   Q. Was there a cafeteria within the facility itself? 11   Q. Was down of the	1	•	1	·
4 A. Yes. 5 Q. Did she ever go to any of these dinners with 6 you guys at Steak On A Stone? 7 A. No. 8 Q. Did she participate in the paintball? 9 A. She did not. 10 Q. Did she participate in any of these holiday dinners that you mentioned? 11 dinners that you mentioned? 12 A. No. 13 Q. How many holiday dinners were there all together? 14 together? 15 A. Just one. 16 Q. Just one? 17 A. Yes. 18 Q. What holiday was that? 19 A. Christmas, I think. You know, around then. 20 Q. And she wasn't at that dinner either? 21 A. No. 22 Q. Where was that dinner held? 23 A. Solar DiMingo. 24 Q. Sow you one of Mr. Frazier's better friends in the work place in touch with him since he left Bed, Bath & Beyond? 9 A. Through like e-mail, but not so much an e-mail linked in type thing. 10 Q. Did Isa DelRay go out to lunch with you and kevin? 11 A. Yes. 12 Q. What holiday was that? 13 A. Yes. 14 A. No. 15 guys? 16 A. Approximately once every other week, something like that. 18 Q. If Mr. Frazier wasn't going out to lunch with you you, you said you went to lunch with him three or four times a week? 11 A. No. 12 Q. Was Lisa DelRay at any of the these functions when you were out with Mr. Frazier, any of these nights out that you can recall? 19 Q. Was Lisa DelRay at any of the these functions when you were out with Mr. Frazier, any of these nights out that you can recall? 19 Q. Was that you as lunch? 20 Q. Where did you mostly eat lunch? 21 A. Ott. 22 Q. Where did you mostly eat lunch? 23 A. Yes. 24 Q. So you went out? 25 A. Fordally, like Kevin and myself. 26 Q. Did you ever get any e-mails from Lisa DelRay that depicted images of African Americans? 27 A. Probably never. 28 A. Yes. 29 Q. Where did you mostly eat have have have a cafeteria within the facility isself? 29 A. Probably never. 20 Q. Was there a cafeteria within the facility isself? 20 A. No don't recall Mr. Frazier, did he generally eat at the cafeteria? 21 A. No don't recall Mr. Frazier going down and eating at the luncheonette? 22 Q. Was there like a group that would gener	2	-	2	•
5 you guys at Steak On A Stone? 6 you guys at Steak On A Stone? 7 A. No. 8 Q. Did she participate in the paintball? 9 A. She did not. 10 Q. Did she participate in any of these holiday 11 dimners that you mentioned? 12 A. No. 13 Q. How many holiday dinners were there all 14 together? 15 A. Just one. 16 Q. Just one? 17 A. Yes. 18 Q. What holiday was that? 19 A. Christmas, I think. You know, around then. 20 Q. And she wasn't at that dinner either? 21 A. No. 22 Q. Where was that dinner held? 23 A. Solar DiMingo. 24 Q. Some kind of restaurant, I assume? 25 A. Portuguese, yes. 26 You said that you are buch? 27 Q. Was Liss DelRay at any of the shese functions when you were out with Mr. Frazier, any of these nights out that you can recall? 29 Q. Where dish though the work place. 20 Q. Where dish do you mostly eat lunch? 21 Q. Was traced, but mostly Sushi. 22 Q. Where dish though you set at the cafeteria? 23 A. It varied, but mostly Sushi. 24 Q. Where dish would you eat at the cafeteria? 25 A. Porbably never. 26 Q. How often would you eat at the cafeteria? 27 A. Yes. 28 A. Yes. 29 Q. Where dish you mostly eat lunch? 30 Q. Was there a cafeteria within the facility itsel? 31 A. Yes. 32 Q. Whore would you cat at the cafeteria? 33 A. No. 34 Portuguese, yes. 35 A. Friendly, like Kevin and myself. 36 Q. Did you ever get any e-mails from Lisa DelRay that depicted images of African Americans? 38 A. Yes. 39 Q. Whore did you mostly eat lunch? 30 Q. Was there a cafeteria within the facility itsel? 31 A. Yes. 31 A. Yes. 32 A. Friendly, like Kevin and myself. 33 Q. Was there a cafeteria within the facility itsel? 34 A. Probably never. 35 A. Friendly, like Kevin and myself. 36 Q. Did you ever get any e-mails from Lisa DelRay that you shought might be considered offensive inactive? 35 A. Priendly like Frezier going down and carting at the luncheonette? 36 A. No. 37 Q. Was there a cafeteria within the facility itself? 38 Bed, Bath & Beyond? 4 A. Priendly her work place. 4 Power of the work place. 5 Q. Did you ever get any e-mails from	3	Q. Do you know who that is?	3	like going, and that would vary from time to time.
6 you guys at Steak On A Stone? 7 A. No. 9 Did she participate in the paintball? 9 A. She did not. 10 Q. Did she participate in any of these holiday in dinners that you mentioned? 11 A. No. 12 A. No. 13 Q. How many holiday dinners were there all together? 14 together? 15 A. Just one. 16 Q. Just one? 17 A. Yes. 18 Q. What holiday was that? 19 A. Christmas, I think. You know, around then. 20 Q. And she wasn't at that dinner either? 21 A. No. 22 Q. Where was that dinner held? 23 A. Solar DiMingo. 24 Q. Some kind of restaurant, I assume? 25 A. Portuguese, yes. 26 You said that you are unt with Mr. Frazier when you were out with Mr. Frazier, any of the see nights out that you can recall? 28 A. Nes. 29 Q. Where was that you are funch with Mr. Frazier like two or three times a week? 29 A. Yes. 20 Q. Was there as defeteria within the facility isself? 21 A. Out. 22 Q. Was there as defeteria within the facility isself? 23 A. Yes. 24 Q. Wow about Mr. Frazier, did be generally eat at the cafeteria? 26 A. Not that I recall. 27 Q. Wow about Mr. Frazier, did be generally eat at the cafeteria? 28 Q. How often would generally eat at the cafeteria? 29 Q. Wow don't recall Mr. Frazier going down and eating at the luncheonetic? 30 Q. Was there like a group that would generally eat quite carried.	4	A. Yes.	4	Q. So you one of Mr. Frazier's better friends in
7 A. No. 8 Q. Did she participate in the paintball? 9 A. She did not. 10 Q. Did she participate in any of these holiday dimers that you mentioned? 11 dimers that you mentioned? 12 A. No. 13 Q. How many holiday dinners were there all toether? 14 together? 15 A. Just one. 16 Q. Just one? 17 A. Yes. 18 Q. What holiday was that? 19 A. Christmas, I think. You know, around then. 10 Q. And she wasn't at that dinner either? 11 A. No. 12 Q. Where was that dinner either? 12 A. No. 13 Q. Where was that dinner either? 14 A. No there was that dinner held? 15 A. Jost one. 16 Q. Some kind of restaurant, I assume? 17 A. Yes. 18 Q. What not that I recall, no. 19 Q. Was Lisa DelRay at any of the these functions when you were out with Mr. Frazier, any of these nights out that you can recall? 19 A. No that I recall, no. 20 A. A yes. 31 Q. Was there did you mostly eat lunch? 4 A. Not that I revell, no. 4 A. Yes. 4 A. Yes. 5 Q. Where did you mostly eat lunch? 6 You said that you ate lunch with Mr. Frazier like two or three times a week? 10 A. It varied, but mostly Sushi. 11 Q. So you went out? 12 A. Yes. 13 Q. Was there a cafeteria within the facility itself? 14 A. Not that I recall. 15 A. Yes. 16 Q. How often would you eat at the cafeteria? 17 A. Yes. 18 DelRay at any of the these functions when you were out with Mr. Frazier, any of these nights on the properties of the properti	5	Q. Did she ever go to any of these dinners with	5	the workplace?
8 Bed, Bath & Beyond? 9 A. She did not. 1 Q. Did she participate in any of these holiday dimers that you mentioned? 1 A. No. 1 Q. How many holiday dimers were there all together? 1 A. Just one. 1 Q. Just one? 1 A. Yes. 1 Q. How anny holiday was that? 1 A. Yes. 1 A. Ves. 2 Q. What holiday was that? 1 A. No. 2 Q. Mat she wasn't at that dimner either? 2 A. No. 2 Q. Where was that dimner held? 2 A. Solar DiMingo. 2 Q. Where was that dinner held? 3 A. Solar DiMingo. 2 Q. Was Lisa DelRay at any of the these functions when you were out with Mr. Frazier, any of these nights out that you can recall? 4 A. Not that I recall, no. 5 Q. Let's go to within the work place. 6 You said that you at the lunch with Mr. Frazier like two or three times a week? 8 A. Yes. 9 Q. Where did you mostly eat lunch? 1 Q. Soy you went out? 1 Q. Soy ou went out? 2 A. Out. 1 Q. How often would she go to lunch with you were out to hunch with him three or four times a week? 4 A. Portbably going out to lunch with him three or four times a week? 5 A. Portuguese, yes. 1 Probably going out to lunch with him three or four times a week? 2 A. Therefore wasn't going out to lunch with you were out with Mr. Frazier, any of these nights out that you can recall? 2 Q. Were Lisa DelRay and Mr. Frazier particularly 3 A. No that I recall, o. 4 A. Yes. 5 Q. Where did you mostly eat lunch? 5 Q. Let's go to within the work place. 6 You said that you at let lunch with Mr. Frazier like two or three times a week? 8 A. Yes. 1 Q. Where did you mostly sushi. 1 Q. So you went our? 2 A. Out. 3 Q. What race are you, by the way, just for the record? 4 A. Not that I recall. 5 Q. How often would you eat at the cafeteria? 6 Q. Did you ever get any e-mails from Lisa DelRay that depicted images of African Americans? 7 A. No. 8 A. No. 9 Q. Was there a cafeteria within the facility itself? 9 Q. Did you ever get any e-mails from Lisa DelRay that depicted images of African Americans? 1 A. No. 1 A. No don't recall Mr. Frazier going down and eating at the uncheonette? 2 A. No. 3 Q. Was t	6	you guys at Steak On A Stone?	6	A. I'd like to believe that, yes.
9   A. She did not.   10   Q. Did she participate in any of these holiday it dimers that you mentioned?   12   A. No.   13   Q. How many holiday dinners were there all together?   14   together?   15   A. Just one.   16   Q. Just one?   17   A. Yes.   18   Q. What holiday was that?   18   Q. What holiday was that?   19   A. Christmas, I think. You know, around then.   19   Q. And she wasn't at that dinner either?   19   A. Christmas, I think. You know, around then.   20   Q. And she wasn't at that dinner either?   21   A. No.   22   Q. Where was that dinner either?   22   Q. Dyou know wast down were out with Mr. Frazier, any of these nights out that you can recall?   4   A. Not that I recall, no.   5   Q. Let's go to within the work place.   6   You said that you ate funch with Mr. Frazier is a week?   17   A. Yes.   18   Q. Let's go to within the work place.   6   You said that you are turned in the call to a like wor three times a week?   18   A. Yes.   19   Q. Was there a cafeteria within the facility   11   Q. Was there a cafeteria within the facility   11   A. Yes.   12   A. Out.   12   A. Out.   13   Q. Was there a cafeteria within the facility   14   itself?   A. Probably never.   17   A. Probably never.   18   A. No.   19   Q. Do you know out you eat at the cafeteria?   19   A. No.   10   Just white?   11   A. Yes.   11   A. Yes.   12   A. No.   12   A. No.   13   Q. Was there a cafeteria within the facility   11   A. Probably never.   12   A. No.   13   Q. Was there a cafeteria within the facility   14   itself?   A. Probably never.   17   A. Probably never.   18   A. No.   19   Q. Did you ever see any e-mails from Lisa DelRay   11   raciall, Q. Was there a cafeteria?   12   A. No.   13   Q. Was there a cafeteria?   14   A. No.   15   A. White.   16   Q. Just White?   17   A. Yes.   18   Q. Are you Latino, Hispanic?   18   Q. Are you Latino, Hispanic?   18   A. No.   20   Q. At any point in time did Mr. Frazier tell you   21   that he received any e-mails that he found to be racially offensive?   22	7	A. No.	7	Q. Have you been in touch with him since he left
10   dimers that you mentioned?   12   A. No.   13   Q. How many holiday dimners were there all together?   15   A. Just one.   16   Q. Just one?   16   Q. Just one?   17   A. Yes.   18   Q. What holiday was that?   18   Q. What holiday was that?   19   A. Christmas, I think. You know, around then.   20   Q. And she wasn't at that dimner either?   21   A. No.   22   Q. Where was that dimner either?   23   A. Solar DiMingo.   24   Q. Some kind of restaurant, I assume?   25   A. Portuguese, yes.   26   A. Probably going-out-with-other folks.   25   Q. Were Lisa DelRay at any of the these functions when you were out with Mr. Frazier is out that you can recall?   24   A. Not that I recall, no.   25   Q. Where did you mostly eat lunch?   26   Q. Where did you mostly eat lunch?   27   A. Yes.   3   Q. What's you went out?   3   Q. Was there a cafeteria within the facility itself?   4   A. Out.   19   Q. Was there a cafeteria within the facility itself?   4   A. Not that I recall.   4   A. Not.   4	8	Q. Did she participate in the paintball?	8	Bed, Bath & Beyond?
dimers that you mentioned?  A. No.  13 Q. How many holiday dinners were there all to gether?  A. Just one.  16 Q. Just one?  17 A. Yes.  18 Q. What holiday was that?  19 A. Christmas, I think. You know, around then.  20 Q. And she wasn't at that dinner either?  21 A. No.  22 Q. Where was that dinner held?  23 A. Solar Diffuingo.  24 Q. Some kind of restaurant, I assume?  25 A. Portuguese, yes.  19  1 Q. Was Lisa DelRay at any of the these functions when you are recall?  4 A. No that I recall, no.  5 Q. Let's go to within the work place.  6 You said that you at lunch with Mr. Frazier  7 like two or three times a week?  8 A. Yes.  10 Q. Where did you mostly eat lunch?  11 Q. Did Lisa DelRay go out to lunch with you and then.  12 Q. How often would she go to lunch with you mostly sub lunch?  13 A. Yes.  14 Q. How often would she go to lunch with you mostly eat lunch with him three or four times a week?  20 Let's go to within the work place.  21 A. Right.  22 Q. Was Lisa DelRay at any of the these functions when you are recall?  23 A. No.  24 Q. Sone kind of restaurant, I assume?  25 A. Friendly, like Kevin and myself.  26 Q. Wast's your understanding of what their relationship was like?  27 A. Thelieve so, yes.  28 A. Yes.  29 Q. Where did you mostly subhi.  10 Q. Was there a cafeteria within the facility itself?  20 A. Not that I recall.  21 A. No.  22 A. No.  23 Q. Was there a cafeteria within the facility itself?  24 A. Son.  25 A. Probably never.  26 Q. How often would you eat at the cafeteria?  29 Q. Did you ever get any e-mails from Lisa DelRay that you thought might be considered offensive racially?  20 A. Not that I recall.  21 Q. You don't recall Mr. Frazier going down and eating at the luncheonette?  22 A. No.  23 A. No.  24 Q. Was there like a group that would generally eat a the received any e-mails that he found to be racially offensive?  24 A. Probably never.  25 A. Wast.	9	A. She did not.	9	A. Through like e-mail, but not so much an
12 A. No. 13 Q. How many holiday dinners were there all 14 together? 15 A. Just one. 16 Q. Just one? 17 A. Yes. 18 Q. What holiday was that? 19 A. Christmas, I think, You know, around then. 20 Q. And she wasn't at that dinner either? 21 A. No. 22 Q. Where was that dinner held? 23 A. Solar DiMingo. 24 Q. Some kind of restaurant, I assume? 25 A. Portuguese, yes.  19 Q. Was Lisa DelRay at any of the these functions 2 when you were out with Mr. Frazier, any of these nights 3 out that you can recall? 4 A. No. that I recall, no. 5 Q. Let's go to within the work place. 6 You said that you ate lunch with Mr. Frazier 7 like two or three times a week? 10 Q. Where did you mostly eat lunch? 11 Q. So you wern out? 12 A. Out. 13 Q. Was there a cafeteria within the facility itself? 14 A. Poshably never. 15 A. Yes. 16 Q. How often would you eat at the cafeteria? 17 A. Probably never. 18 Q. How about Mr. Frazier going down and eating at the lunckeonette? 20 A. No that I recall. 21 Q. You don't recall Mr. Frazier going down and eating at the lunckeonette? 22 A. No. 24 Q. Was there like a group that would generally once every other week, something like that. 26 Q. If Mr. Frazier wasn't going out to lunch with pour, sous aid you went to lunch with him three or four times a week? 21 A. Right. 22 Q. Do you know what else he'd been doing for lunch? 24 A. Perobably going-out-with other folks. 25 Q. Were Lisa DelRay and Mr. Frazier particularly 26 Triendly? 27 A. Tobelieve so, yes. 28 A. Tobelieve so, yes. 39 Q. What's your understanding of what their relationship was like? 40 Q. Did you ever get any e-mails from Lisa DelRay that pour drought might be considered offensive that pour depoted images of African Americans? 41 A. No. 42 Q. Was there a cafeteria within the facility inself? 43 A. No. 44 Probably never. 45 A. Friendly, like Kevin and myself. 46 Q. Did you ever see any e-mails from Lisa DelRay that pour depoted images of African Americans? 46 Q. Did you ever see any e-mails from Lisa DelRay that pour depoted images of African Am	10	Q. Did she participate in any of these holiday	10	e-mail linked in type thing.
13 Q. How many holiday dinners were there all together? 15 A. Just one. 16 Q. Just one? 17 A. Yes. 18 Q. What holiday was that? 19 A. Christmas, I think. You know, around then. 20 Q. And she wasn't at that dinner either? 21 A. No. 22 Q. Where was that dinner held? 23 A. Solar DiMingo. 24 Q. Some kind of restaurant, I assume? 25 A. Portuguese, yes.  19 1 Q. Was Lisa DelRay at any of the these functions when you were out with Mr. Frazier, any of these nights out that you can recall? 24 A. No that I recall, no. 25 Q. Let's go to within the work place. 26 You said that you are lunch with Mr. Frazier like two or three times a week? 27 A. Yes. 28 A. Yes. 29 Q. Where did you mostly eat hunch? 29 Q. Where did you mostly eat hunch? 30 Q. Where did you mostly eat hunch? 4 A. Not that I recall, no. 4 A. Not that I recall, no. 5 Q. Let's go to within the work place. 6 You said that you are lunch with Mr. Frazier like two or three times a week? 8 A. Yes. 9 Q. Where did you mostly eat hunch? 10 A. it varied, but mostly Sushi. 11 Q. So you went out? 12 A. Out. 13 Q. Was there a cafeteria within the facility itself? 14 A. Probably never. 15 guys? 16 A. Approximately once every other week, 20 If Mr. Frazier wasn't going out to lunch with him three or four times a week? 21 A. Right. 22 Q. Do you know what else he'd been doing for lunch? 23 A. No. 24 Q. Was there a can example? 25 A. Probably going-out with other folks. 25 Q. Were Lisa DelRay and Mr. Frazier particularly 26 A. Friendly, like Kevin and myself. 27 A. Friendly, like Kevin and myself. 28 A. No. 29 Q. Did you ever see any e-mails from Lisa DelRay that depicted images of African Americans? 30 Q. What race are you, by the way, just for the record? 31 A. No. 32 Q. Was there a cafeteria within the facility itself? 33 Q. What race are you, by the way, just for the record? 34 A. No. 35 Q. A reyou Latino, Hispanic? 36 Q. A reyou Latino, Hispanic? 37 A. Probably never. 38 Q. How about Mr. Frazier going down and eating at the luncheonette? 39 Q. A reyou Latino, Hispanic? 30 Q.	11	dinners that you mentioned?	11	Q. Did Lisa DelRay go out to lunch with you and
14 together? 15 A. Just one. 16 Q. Just one? 17 A. Yes. 18 Q. What holiday was that? 19 A. Christmas, I think. You know, around then. 20 Q. And she wasn't at that dinner either? 21 A. No. 22 Q. Where was that dinner held? 23 A. Solar DiMingo. 24 Q. Some kind of restaurant, I assume? 25 A. Portuguese, yes.  19 1 Q. Was Lisa DelRay at any of the these functions when you were out with Mr. Frazier, any of these nights out that you can recall? 4 A. Not that I recall, no. 5 Q. Let's go to within the work place. 6 You said that you ate lunch with Mr. Frazier 7 like two or three times a week? 8 A. Yes. 9 Q. Where did you mostly cat lunch? 10 A. It varied, but mostly Sushi. 11 Q. So you went out? 12 A. Out. 13 Q. Was there a cafeteria within the facility itself? 14 itself? 15 A. Yes. 16 Q. How often would you ent at the cafeteria? 17 A. Probably never. 18 Q. How often would you ent at the cafeteria? 19 Q. Was there a cafeteria within the facility at the cafeteria? 20 A. Not that I recall. 21 Q. Was there a cafeteria within the facility at the cafeteria? 22 A. Probably never. 33 Q. What special may be the cafeteria? 44 A. Probably never. 45 A. Yes. 46 Q. How often would you ent at the cafeteria? 47 A. Probably never. 48 A. Yes. 49 Q. How often would you ent at the cafeteria? 40 A. Probably never. 41 A. Probably never. 42 A. Probably never. 43 A. No. 44 Q. Was there did you mostly cat the cafeteria? 45 A. Probably never. 46 Q. How often would you ent at the cafeteria? 47 A. Probably never. 48 A. Yes. 49 Q. How often would you ent at the cafeteria? 40 A. Not that I recall. 41 A. Probably never. 42 A. Derbably going-out-with other tolks. 42 A. Derbably going-out-with other tolks. 42 A. Derbably going-out-with other tolks. 41 friendly? 42 A. Derbably going-out-with other tolks. 42 A. Derbably going-out-with other tolks. 42 A. Derbably going-out-with other tolks. 43 A. No. 44 Probably going-out-with other tolks. 55 Q. What's your understanding of what their relationship was like? 56 Q. Did you ever see any e-mails from Lisa D	12	A. No.	12	Kevin?
15 Q. Just one? 16 Q. Just one? 17 A. Yes. 18 Q. What holiday was that? 19 A. Christmas, I think. You know, around then. 20 Q. And she wasn't at that dinner either? 21 A. No. 22 Q. Where was that dinner held? 23 A. Solar DiMingo. 24 Q. Some kind of restaurant, I assume? 25 A. Portuguese, yes.  19 1 Q. Was Lisa DelRay at any of the these functions when you were out with Mr. Frazier, any of these nights out that you can recall? 4 A. Not that I recall, no. 5 Q. Let's go to within the work place. 6 You said that you ate lunch with Mr. Frazier   7 like two or three times a week?  10 A. It varied, but mostly Sushi. 11 Q. So you went out? 12 A. No. 13 Q. Was there a cafeteria within the facility itself? 14 A. Not that I recall,   15 guys?  4 A. Approximately once every other week,   16 A. Approximately once every other week,   17 something like that.  Q. If Mr. Frazier wasn't going out to lunch with him three or four times a week? 21 A. Right. 22 Q. Do you know what else he'd been doing for lunch? 23 Let's go to within the work place. 24 A. Not that J recall, no. 25 Was Lisa DelRay at any of the these functions out that you can recall? 26 Q. What's your understanding of what their relationship was like? 27 The deficient mages of African Americans? 28 A. Yes. 29 Q. Did you ever see any e-mails from Lisa DelRay that you thought might be considered offensive racially? 20 A. No. 21 A. No. 22 Q. Was there a cafeteria within the facility itself? 23 A. No. 24 Q. Was there la Gefteria? 25 A. Probably never. 26 Low worth and the probably never. 27 A. Probably never. 28 A. No. 29 Q. Was there did Mr. Frazier going down and eating at the luncheonette? 20 A. No. 21 A. No. 22 A. Approbably going-out with thim three or four times a week? 22 D. Do you know what else he'd been doing for lunch? 23 A. No. 24 Q. Was there did fire these functions of times a week? 25 A. Probably going-out with other folks. 26 Q. Did you ever see any e-mails from Lisa DelRay that you thought might be considered offensive racially? 26 A. White. 27 A. Ves.	13	Q. How many holiday dinners were there all	13	A. Yes.
16 A. Approximately once every other week, 17 A. Yes. 18 Q. What holiday was that? 19 A. Christmas, I think. You know, around then. 20 Q. And she wasn't at that dinner either? 21 A. No. 22 Q. Where was that dinner held? 23 A. Solar DiMingo. 24 Q. Some kind of restaurant, I assume? 25 A. Portuguese, yes.  19 1 Q. Was Lisa DelRay at any of the these functions 2 when you were out with Mr. Frazier, any of these nights 3 out that you can recall? 4 A. Not that I recall, no. 5 Q. Let's go to within the work place. 6 You said that you ate lunch with Mr. Frazier 7 like two or three times a week? 8 A. Yes. 9 Q. Where did you mostly eat lunch? 10 A. It varied, but mostly Sushi. 11 Q. Was there a cafeteria within the facility 12 A. Out. 13 Q. Was there a cafeteria within the facility 14 itself? 15 A. Probably never. 16 Q. How often would you eat at the cafeteria? 17 A. Probably never. 18 Q. How about Mr. Frazier going down and eating at the Luncheonette? 20 A. No. 21 A. No. 22 A. I believe so, yes. 3 Q. What's your understanding of what their relationship was like? 4 relationship was like? 5 A. Friendly, like Kevin and myself. 6 Q. Did you ever get any e-mails from Lisa DelRay that depicted images of African Americans? 8 A. No. 9 Q. Was there a cafeteria within the facility 10 A. It varied, but mostly Sushi. 11 Q. Was there a cafeteria within the facility 12 A. Out. 13 Q. Was there a cafeteria within the facility 13 Q. How about Mr. Frazier, did he generally eat at the cafeteria? 14 A. No. 15 Q. How often would you eat at the cafeteria? 16 Q. How often would you eat at the cafeteria? 17 A. Probably never. 18 Q. How about Mr. Frazier going down and eating at the Luncheonette? 29 A. No. 20 A. No. 21 A. No. 22 A. Treblably going-out-with-other folks. 22 A. I believe so, yes. 23 A. No. 24 Q. Was there did you mostly eat nurch? 25 A. Friendly, like Kevin and myself. 26 A. Friendly, like Kevin and myself. 27 A. Friendly, like Kevin and myself. 28 A. No. 9 Q. Did you ever get any e-mails from Lisa DelRay that you thought might be	14	together?	14	Q. How often would she go to lunch with you
17 A. Yes. 18 Q. What holiday was that? 19 A. Christmas, I think. You know, around then. 20 Q. And she wasn't at that dinner either? 21 A. No. 22 Q. Where was that dinner held? 23 A. Solar DiMingo. 24 Q. Some kind of restaurant, I assume? 25 A. Portuguese, yes.  19 1 Q. Was Lisa DelRay at any of the these functions out that you can recall? 26 When you were out with Mr. Frazier, any of these nights out that you can recall? 27 A. No that I recall, no. 28 Where did you mostly eat lunch? 29 Q. Where did you mostly eat lunch? 30 Q. Where did you mostly eat lunch? 4 A. Not that I recall in the work place. 5 Q. Were Lisa DelRay at any of the these functions in the work place. 6 You said that you ate lunch with Mr. Frazier like two or three times a week? 8 A. Yes. 9 Q. Where did you mostly eat lunch? 10 A. It varied, but mostly Sushi. 11 Q. So you went out? 12 A. Out. 13 Q. Was there a cafeteria within the facility itself? 14 itself? 15 A. Probably never. 16 Q. How often would you eat at the cafeteria? 17 A. Probably never. 18 Q. How about Mr. Frazier, going down and eating at the luncheonette? 20 A. Not that I recall. 21 Q. You don't recall Mr. Frazier going down and eating at the luncheonette? 22 A. No. 23 A. No. 24 Q. Was there like a group that would generally eat eating at the luncheonette? 25 A. Probably never there functions in the work place. 26 A. No. 27 A. Probably never. 28 A. No. 29 Q. Did you ever see any e-mails from Lisa DelRay that depicted images of African Americans? 29 A. No. 29 Q. How about Mr. Frazier, did he generally eat the cafeteria? 20 A. Not that I recall. 21 Q. You don't recall Mr. Frazier going down and eating at the luncheonette? 22 A. No. 23 A. No. 24 Q. Was there like a group that would generally was a facility with the facility was the received any e-mails that he found to be racially offensive? 25 A. Probably never. 26 A. Probably never. 27 A. Yes. 28 A. No. 29 Q. How about Mr. Frazier going down and eating at the luncheonette? 29 A. No down the lunch with then times either? 29 A. No d	15	A. Just one.	15	guys?
18 Q. What holiday was that? 19 A. Christmas, I think. You know, around then. 20 Q. And she wasn't at that dinner either? 21 A. No. 22 Q. Where was that dinner held? 23 A. Solar DiMingo. 24 Q. Some kind of restaurant, I assume? 25 A. Portuguese, yes. 26 Q. Was Lisa DelRay at any of the these functions when you were out with Mr. Frazier, any of these nights out that you can recall? 28 when you were out with Mr. Frazier, any of these nights out that you can recall? 29 Q. Let's go to within the work place. 30 Q. Let's go to within the work place. 40 You said that you at lunch with Mr. Frazier and that the tree times a week? 41 A. Yes. 42 Q. Where did you mostly eat lunch? 43 A. Yes. 44 A. Yes. 45 A. Yes. 46 Q. Where did you mostly eat lunch? 47 Ilike two or three times a week? 48 A. Yes. 49 Q. Where did you mostly sushi. 40 Q. So you went out? 41 A. No. 42 A. Probably going-out with other folks. 42 A. Probably going-out with other folks. 43 Q. What's your understanding of what their relationship was like? 44 A. Ibelieve so, yes. 45 A. Friendly, like Kevin and myself. 46 Q. Did you ever get any e-mails from Lisa DelRay that depicted images of African Americans? 48 A. Yes. 49 Q. Where did you mostly sushi. 40 Q. So you went out? 41 tracially? 41 that depicted images of African Americans? 42 A. No. 43 A. No. 44 A. Toelably never. 45 A. No. 46 Q. How often would you eat at the cafeteria? 46 Q. How often would you eat at the cafeteria? 40 A. Probably never. 41 The depicted images of African Americans? 42 A. No. 43 A. No. 44 A. Toelably never. 45 A. No. 46 Q. Was there a cafeteria within the facility that you thought might be considered offensive racially? 47 A. No. 48 A. Yes. 49 Q. Was there a cafeteria within the facility that you dought might be considered offensive racially? 40 A. Probably never. 41 The depicted images of African Americans? 41 The depicted images of African Americans? 42 A. No. 43 A. No. 44 A. No. 45 Q. Was there a cafeteria within the facility that you thought might be considered offensive racially	16	Q. Just one?	16	A. Approximately once every other week,
19 A. Christmas, I think. You know, around then. 20 Q. And she wasn't at that dinner either? 21 A. No. 22 Q. Where was that dinner held? 23 A. Solar DiMingo. 24 Q. Some kind of restaurant, I assume? 25 A. Portuguese, yes.  19 1 Q. Was Lisa DelRay at any of the these functions 3 out that you can recall? 4 A. Not that I recall, no. 5 Q. Let's go to within the work place. 6 You said that you ate lunch with Mr. Frazier 7 like two or three times a week? 8 A. Yes. 9 Q. Where did you mostly eat lunch? 10 A. It varied, but mostly Sushi. 11 Q. So you went out? 12 A. Out. 13 Q. Was there a cafeteria within the facility 14 itself? 15 A. Yes. 16 Q. How often would you eat at the cafeteria? 17 A. Probably never. 18 Q. How often would you eat at the cafeteria? 19 A. Not that I recall Mr. Frazier, did he generally eat at the cafeteria? 20 A. Not that I recall Mr. Frazier going down and eating at the luncheonette? 21 A. No. 22 Q. Do you know what else he'd been doing for times a week? 22 La A. Right. 23 A. Right. 24 A. Right. 25 A. Right. 26 Q. Do you know what else he'd been doing for lunch? 27 Lunch? 28 A. Probably going-out with other folks. 29 Q. Where Lisa DelRay and Mr. Frazier particularly 20 A. Tebelieve so, yes. 30 Q. What's your understanding of what their relationship was like? 4 relationship was like? 5 A. Friendly, like Kevin and myself. 6 Q. Did you ever get any e-mails from Lisa DelRay that you thought might be considered offensive racially? 10 that pour ever see any e-mails from Lisa DelRay that you thought might be considered offensive racially? 11 racially? 12 A. No. 13 Q. What race are you, by the way, just for the record? 14 A. Yes. 15 A. White. 16 Q. Just White? 17 A. Yes. 18 Q. Are you Latino, Hispanic? 18 A. No. 29 Q. At any point in time did Mr. Frazier tell you that he received any e-mails that he found to be racially offensive? 20 A. No. 21 A. No. 22 A. No. 23 A. No. 24 Q. Was there like a group that would generally	17	A. Yes.	17	something like that.
20 Q. And she wasn't at that dinner either? 21 A. No. 22 Q. Where was that dinner held? 23 A. Solar DiMingo. 24 Q. Some kind of restaurant, I assume? 25 A. Portuguese, yes.  26 Q. Was Lisa DelRay at any of the these functions 2 when you were out with Mr. Frazier, any of these nights 3 out that you can recal? 4 A. Not that I recall, no. 5 Q. Let's go to within the work place. 6 You said that you ate lunch with Mr. Frazier 7 like two or three times a week? 8 A. Yes. 9 Q. Where did you mostly eat lunch? 10 Q. Was there a cafeteria within the facility 11 Q. So you went out? 12 A. Out. 13 Q. Was there a cafeteria within the facility 14 itself? 15 A. Yes. 16 Q. How often would you eat at the cafeteria? 17 A. Probably going-out-with other folks. 29 Q. Where Jisa DelRay and Mr. Frazier particularly 20 A. Not that I recall, no. 4 Probably going-out-with other folks. 20 Were Lisa DelRay and Mr. Frazier particularly 21 friendly? 22 A. Tbelieve so, yes. 3 Q. What's your understanding of what their relationship was like? 4 relationship was like? 5 A. Friendly, like Kevin and myself. 6 Q. Did you ever get any e-mails from Lisa DelRay that depicted images of African Americans? 8 A. No. 9 Q. Did you ever see any e-mails from Lisa DelRay that you thought might be considered offensive racially? 10 A. No. 11 a. Q. Was there a cafeteria within the facility 11 a. No. 12 A. No. 13 Q. What race are you, by the way, just for the record? 14 A. Yes. 15 A. White. 16 Q. Just White? 17 A. Yes. 18 Q. Are you Latino, Hispanic? 19 A. Italian. 20 A. Not that I recall Mr. Frazier going down and entire at the uncheonette? 21 A. No. 22 A. No. 23 A. Yes. 24 Q. Do you remember approximately when that was?	18	Q. What holiday was that?	18	Q. If Mr. Frazier wasn't going out to lunch with
20 Q. And she wasn't at that dinner either? 21 A. No. 22 Q. Where was that dinner held? 23 A. Solar DiMingo. 24 Q. Some kind of restaurant, I assume? 25 A. Portuguese, yes.  26 Q. Was Lisa DelRay at any of the these functions 2 when you were out with Mr. Frazier, any of these nights 3 out that you can recal? 4 A. Not that I recall, no. 5 Q. Let's go to within the work place. 6 You said that you ate lunch with Mr. Frazier 7 like two or three times a week? 8 A. Yes. 9 Q. Where did you mostly eat lunch? 10 Q. Was there a cafeteria within the facility 11 Q. So you went out? 12 A. Out. 13 Q. Was there a cafeteria within the facility 14 itself? 15 A. Yes. 16 Q. How often would you eat at the cafeteria? 17 A. Probably going-out-with other folks. 29 Q. Where Jisa DelRay and Mr. Frazier particularly 20 A. Not that I recall, no. 4 Probably going-out-with other folks. 20 Were Lisa DelRay and Mr. Frazier particularly 21 friendly? 22 A. Tbelieve so, yes. 3 Q. What's your understanding of what their relationship was like? 4 relationship was like? 5 A. Friendly, like Kevin and myself. 6 Q. Did you ever get any e-mails from Lisa DelRay that depicted images of African Americans? 8 A. No. 9 Q. Did you ever see any e-mails from Lisa DelRay that you thought might be considered offensive racially? 10 A. No. 11 a. Q. Was there a cafeteria within the facility 11 a. No. 12 A. No. 13 Q. What race are you, by the way, just for the record? 14 A. Yes. 15 A. White. 16 Q. Just White? 17 A. Yes. 18 Q. Are you Latino, Hispanic? 19 A. Italian. 20 A. Not that I recall Mr. Frazier going down and entire at the uncheonette? 21 A. No. 22 A. No. 23 A. Yes. 24 Q. Do you remember approximately when that was?	19	A. Christmas, I think. You know, around then.	19	
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A. Solar DiMingo. Q. Some kind of restaurant, I assume? A. Portuguese, yes.  19 1 Q. Was Lisa DelRay at any of the these functions when you were out with Mr. Frazier, any of these nights out that you can recall? A. Not that I reall. Q. Was there like a group that would generally A. Probably going-out-with other folks. Q. Were Lisa DelRay and Mr. Frazier particularly  21 friendly? A. Probably going-out-with other folks. Q. Were Lisa DelRay and Mr. Frazier particularly  22 A. Toblieve so, yes. 3 Q. What's your understanding of what their relationship was like? 5 A. Friendly, like Kevin and myself. Q. Did you ever get any e-mails from Lisa DelRay that depicted images of African Americans? 8 A. No. 9 Q. Did you ever see any e-mails from Lisa DelRay that depicted images of African Americans? 8 A. No. 9 Q. Did you ever see any e-mails from Lisa DelRay that you thought might be considered offensive racially? 12 A. No. 13 Q. Was there a cafeteria within the facility 14 itself? 15 A. Yes. 16 Q. How often would you eat at the cafeteria? 17 A. Probably going-out-with other folks. Q. Wast's your understanding of what their relationship was like? 5 A. Friendly, like Kevin and myself. Q. Did you ever get any e-mails from Lisa DelRay that depicted images of African Americans? 8 A. No. 9 Q. Did you ever see any e-mails from Lisa DelRay that you thought might be considered offensive racially? 12 A. No. 13 Q. What race are you, by the way, just for the record? 15 A. White. Q. Just White? 17 A. Yes. 18 Q. Are you Latino, Hispanic? 19 A. Italian. Q. At any point in time did Mr. Frazier tell you that he received any e-mails that he found to be racially offensive? 22 racially offensive? 23 A. No. 24 Q. Was there like a group that would generally	21	A. No.	21	A. Right.
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Guy J. Renzi & Associates (609) 989-9199 www.renziassociates.com

			32
	30		52
1	just give me the approximate date when you were	1	day?
2	contacted by Mr. Wilcks.	2	A. No.
3	MR. GOLDSTEIN: It's Wilck.	3	Q. How about in the preceding two days?
4	MR. WILCK: W-i-l-c-k.	4	A. No.
5	A. I know it was after I spoke with Paul.	5	Q. Do you know why you've been named as a
6	Q. Was it a week after or two weeks or three	6	witness in this case?
7	weeks or like last week just before this deposition?	7	A. No.
8	A. I don't recall. I'm sorry. I just	8	Q. Let's take a couple minute break.
9	Q. Did you talk to somebody in preparation for	9	A. Okay. Yes.
10	this deposition today?	10	(Pause in proceeding.)
11	A. I spoke with Paul, and I forgot his name.	11	BY MR. ZATUCHNI:
12	MR. GOLDSTEIN: Somebody from my office. Matt	12	Q. Going back to Ms. DelRay.
13	Bedastein.	13	Did you ever socialize with her outside of
14	A. I don't recall his name.	14	the workplace?
15	Q. That's all right.	15	A. Lunchtime.
1	When was that conversation?	16	O. Lunchtime?
16	A. I think it was earlier in the week.	17	A. Yes.
1	Q. Where did that conversation	18	Q. I guess what I mean is, did you ever go out
18	Again, don't tell me what was said, just	19	to dinner with her just alone, were you ever
19	where that conversation took place.	20	particularly friendly with her outside of the
20	A. Bed, Bath & Beyond.	21	workplace?
21	Q. Present at that conversation was another	22	A. No.
22	gentleman, Mr. Goldstein, Mr. Somebody and Mr. Wilck?	23	Q. Were you ever at her house?
23	A. Mr. Wilck.	24	A. No.
24	Q. Was anybody else present at that	25	Q. Was she ever at your house?
25	Q. was anybody else present at that	123	
	31		33
1	conversation?	1	A. No.
2	A. No.	2	Q. Did she ever discuss Mr. Frazier with you in
3	Q. Did you observe any interaction between Mr.	3	any particular way?
4	Frazier or any of his managers or supervisors, let's	4	A. No.
5	say, in the last week of his employment?	5	Q. You mentioned Ms. DelRay would go out to
6	A. No.	6	Sushi with you and Mr. Frazier let's say once every
7	Q. Did you ever witness Mr. Frazier acting	7	other week?
8	inappropriately in any way?	8	A. Approximately, yes.
9	A. No.	9	Q. Were there times where a group of Mr.
10	Q. Did you ever see him	10	Frazier or anybody else went on group walks around the
111	Did you ever witness any kind of interaction	11	facility?
12	where he was having an argument or raised his voice,	12	A. Yes.
13	was having some type of altercation with one of his	13	Q. Tell me, was that organized by Mr. Frazier?
14	• 0	14	A. I don't recall who organized it.
15		15	Q. How often did such walks take place?
		16	A. Approximately
16 17		17	In the beginning, approximately three, four
1		18	times a week; once a day.
18   19	,	19	Q. And so how long were the walks?
	A. INULUIALI CAN ICCAN.	]	
1		20	A. Approximately 15 minutes, 18 minutes,
20	Q. Okay.	1	**
20 21	Q. Okay. Were you present on the day that Mr. Frazier	21	something like that.
20 21 22	Q. Okay.  Were you present on the day that Mr. Frazier was terminated, his last day of work?	21 22	something like that.  Q. Was there a decrease in the number of walks
20 21 22 23	Q. Okay.  Were you present on the day that Mr. Frazier was terminated, his last day of work?  A. I was at work that day.	21 22 23	something like that.  Q. Was there a decrease in the number of walks per week as time went on?
20 21 22	Q. Okay.  Were you present on the day that Mr. Frazier was terminated, his last day of work?  A. I was at work that day.  Q. Did you witness any interaction that Mr.	21 22	omething like that.  Q. Was there a decrease in the number of walks per week as time went on?  A. There was.

### Exhibit T

UNITED STATES DISTRICT COURT 1 DISTRICT OF NEW JERSEY 2 CIVIL ACTION NO.: 2:10-CV-5398 3 KEVIN FRAZIER, 4 Plaintiff, 5 CIVIL ACTION 6 BED BATH & BEYOND, BED BATH &: 7 BEYOND, INC. and GARY NEWTON, : 8 Defendants. 9 ----X 10 Computer-aided transcript of the deposition 11 testimony of NOREN SHAH taken stenographically in the 12 above-entitled matter before JACQUELINE MATHEWSON, a 13 Certified Court Reporter, License No. XI01404, and 14 Notary Public of the State of New Jersey, at the 15 offices of PROSKAUER ROSE, LLP, One Newark Center, 16 Newark, New Jersey 07102 on Thursday, March 15, 2011, 17 commencing at 11:37 a.m. 18 GUY J. RENZI & ASSOCIATES 19 CERTIFIED COURT REPORTERS & VIDEOGRAPHERS 20 GOLDEN CREST CORPORATE CENTER 21 2277 STATE HIGHWAY #33, SUITE 410 22 TRENTON, NEW JERSEY 08690 23 TEL: (609) 989-9199 TOLL FREE: (800) 368-7652 24 www.renziassociates.com 25

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	2	***************************************	4
1	APPEARANCES:	1	INDEX
2		2	
3	ZATUCHNI & ASSOCIATES, LLC	3	WITNESS PAGE
4	BY: DAVID ZATUCHNI, ESQ.	4	NOREN SHAH
5	287 South Main Street - Route 29	5	Examination by Mr. Zatuchni 5, 23
6	Lambertville, New Jersey 08530	6	Examination by Mr. Goldstein 21
1 7	Tel: (609) 243-0300	7	
$\frac{8}{2}$	E-mail: davidz@zatuchniassociates.com	8	DWIIIDIAG
9	Attorneys for the Plaintiff.	9 10	EXHIBITS
11		11	ID DESCRIPTION PAGE
12	PROSKAUER ROSE, LLP	12	ID DESCRITION TAGE
13	BY: MARVIN M. GOLDSTEIN, ESQ.	13	(NO EXHIBITS WERE MARKED.)
14	One Newark Center, 18th Floor	14	(110 Exhibits Wester Hudden)
15	Newark, New Jersey 07102	15	
16	Tel: (973) 274-3200	16	REQUESTS
17	E-mail: mmgoldstein@proskauer.com	17	`
18	Attorneys for the Defendants Bed Bath &	18	(NO FORMAL REQUESTS WERE MADE.)
19	Beyond and Gary Newton.	19	
20		20	
21		21	
22		22	
23		23	
24 25		24 25	
23		45	
	3	and the second	5
1	APPEARANCES:	1	NOREN SHAH, 10 Skurka Court, Sayreville, New
2		2	Jersey 08872; having been first duly sworn and testified
3	BED, BATH & BEYOND, IN-HOUSE COUNSEL	3	as follows:
4	BY: MICHAEL H. WILCK, ESQ.	4	DIRECT EXAMINATION BY MR. ZATUCHNI:
5 6	650 Liberty Avenue Union, New Jersey 07063	5	Q. Good morning, Mr. Shah.
7	Tel: (908) 688-0888	6	My name is David Zatuchni. For the record,
8	E-mail: michael.wilck@bedbath.com	8	I'm an attorney. I represent Kevin Frazier in a lawsuit that he's brought against Bed, Bath & Beyond, and we're
9	In-house Counsel for Bed, Bath & Beyond.	9	here taking your deposition today as part of that
10	and the comment for Boar, Built or Boyona.	10	lawsuit.
11		11	Have you ever had your deposition taken
12		12	before?
13		13	A. No.
14		14	Q. So I'll just give you some ground
15		15	instructions.
16		16	A deposition is a question and answer
17		17	session. I will be asking you some factual questions
18		18	and your obligation is to answer my questions as
19		19	truthfully as you can. Do you understand that?
20		20	A. Uh-huh.
21 22		21	Q. Please make sure all of your answers are
23		22	verbal. Nods, shrugs, uh-hums, things like that cannot
24		23 24	be recorded by the court reporter. So just speak all of
25			your answers, and keep your voice up so that she can
23		25	hear you. Do you understand that?

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12 10 A. Just that, you know, someone was really loud. A. Two to the left, one behind. 1 1 And I was kind of surprised with the commotion or 2 Q. So how far away would that be approximately whatever. And I got up from my cube and I noticed him 3 3 in terms of feet? 4 standing, and, you know --MR. GOLDSTEIN: As the crow flies? 4 Whatever he was saying, I could not catch 5 MR. ZATUCHNI: As the crow flies, yes. 5 because I got off guard because I was working at the A. I would say between 10 and 15 feet. 6 6 7 time. 7 Q. Did you interact with Mr. Frazier 8 Q. Who was he talking to? 8 professionally in terms of your work responsibilities? 9 A. He was just by himself. He was loud. 9 O. He was loud to himself? 10 10 O. Did you interact with him socially? Would you go out to lunch together, things of A. He was loud standing in his cube looking 11 11 towards the direction, and he was just saying --12 12 that nature? Q. Was he talking to himself or talking to 13 13 A. No. We never went to lunch together. 14 anybody else? Q. Did you interact with him socially within IT 14 A. He wasn't talking to himself, but he was 15 15 West; would you chat, talk? screaming loud, a loud voice, and there were a few 16 A. No. But just like if you're just walking down 16 the hallway, you see somebody and say good morning or structured sentences. 17 17 Q. Could you see who he was talking to? 18 18 hello, that type. A. Nobody was standing. 19 Q. That's the extent of your interaction? 19 20 Q. Did you think that he was addressing somebody A. That's the extent. 20 that was out of your line of vision? 21 Q. Did you ever attend any functions or events 21 22 22 outside the workplace with Mr. Frazier? A. Correct. 23 Q. Do you have any idea who that person was? 23 A. No. 24 A. At that time, no. Q. Did you ever observe Mr. Frazier's, any of 24 25 Q. At some subsequent time did you learn who his interactions with his bosses, his supervisors or 11 13 1 that person was? his managers? 1 2 A. I'm sorry. 2 A. No. 3 Q. At some subsequent time did you learn who Q. Did you ever observe or witness any type of 3 that person was that he was talking to? altercation or argument that Mr. Frazier was having 5 A. Yes. with someone in the workplace? 5 Q. What's your understanding now as you sit here 6 6 of who he was talking to? 7 7 Q. Were you present the day that he was 8 A. From the next day when we found out about his 8 terminated? 9 termination, it seemed like the direction he was 9 A. I worked that day. O. Did you witness any interaction between Mr. 10 looking as he was standing up in the cube and was loud, 10 was the direction where his manager's cube is. 11 Frazier and any boss or supervisor or manager that Q. Where his manager's cube is? 12 12 particular day? 13 A. Yes. 13 A. No. 14 Q. Who was his manager? 14 Q. How about the week before that? 15 A. Gary Newton. 15 A. No. 16 Q. Gary Newton? Q. Did you ever witness Mr. Frazier acting 16 17 Did somebody tell you -inappropriately in any way in the workplace? 17 Do you know for a fact he was talking to Gary 18 18 A. Yes. That particular day. The next day I 19 Newton? found out that he was terminated the day before. 19 20 Nobody told me. 20 That particular day he -- I did notice that. Q. You're just saying that the next day he was 21 Q. So you're saying the day that he was 21 terminated and your impression at that point in time 22 terminated you witnessed something? 22 was that when you saw him the previous day, he was 23 23 A. Correct. 24 facing Gary Newton's cube? 24 O. Okay. 25 A. Correct. 25 What did you observe that day?

### Exhibit U

EEOC FORM 131 (11/09)

U.S. Equal Employment Opportunity Commission

EEDC LOUNT 191 (1.1109)			
			PERSON FILING CHARGE
<del>                                   </del>			
Ms. Priscilla Osto	eria	'	Kevin W. Frazier
Human Resource		<b> </b>	THIS PERSON (check one or both)
FUSIONSTORM			X Claims To Be Aggrieved
2 Bryant Street Suite 150			
San Francisco, C	A 94105		Is Filing on Behalf of Other(s)
			EEOC CHARGE NO.
			524-2011-00257
	NOTICE OF CHAR (See the enclosed	GE OF DISCRIMIN of for additional information	
This is notice that a cha	rge of employment discrimination has	been filed against you	r organization under:
		al Pay Act (EPA)	X The Americans with Disabilities Act (ADA)
The Age Discrimin	ation in Employment Act (ADEA)	The Genetic Inform	mation Nondiscrimination Act (GINA)
The boxes checked below	apply to our handling of this charge:		
1. X No action is required	by you at this time.		
2. Please call the EEO	C Representative listed below concerning	the further handling of this	charge.
3. Please provide by supporting documen the charge. A promp	a statement of your tation to the EEOC Representative listed b or response to this request will make it eas	elow. Your response will	vered by this charge, with copies of any be placed in the file and considered as we investigate gation.
4. Please respond fully Representative listed request will make it e	by to the enclosed I below. Your response will be placed in the easier to conclude our investigation.	d request for information a he file and considered as t	and send your response to the EEOC we investigate the charge. A prompt response to this
expenditure of resou	on program that gives parties an opportun rces. If you would like to participate, pleas	ity to resolve the issues of se say so on the enclosed	f a charge without extensive investigation or form and respond by
to  If you DO NOT wish	to try Mediation, you must respond to any	request(s) made above b	y the date(s) specified there.
•	natter, please use the charge number sho		statement, your response to our request for information,
.lo	hn Douglass	New York D	District Office
	TIU Supervisor	33 Whiteha	
EE	OC Representative	5th Floor	NV 40004
Telephone (21	2) 336-3620	New York, Fax: (212) 3	
Enclosure(s): Copy	of Charge		
CIRCUMSTANCES OF ALLE	GED DISCRIMINATION		
Race Color	Sex Religion National Origin	Age X Disabilit	ty X Retaliation Genatic Information Other
ISSUES: Benefits Unperl	ected charge received on 1/19/11-FOR	MAL CHARGE WILL FOI	LLOW AT A LATER DATE
DATE(S) (on or about): EAI	RLIEST: 08-05-2010 LATEST: 10-30-	2010	
			i de la companya della companya della companya de la companya della companya dell
Date	Name / Title of Authorized Official		Signature
Date			1
January 25, 2011	Corrado Gigante,		

Enclosure with EEOC Form 131 (11/09)

### INFORMATION ON CHARGES OF DISCRIMINATION

### **EEOC RULES AND REGULATIONS**

Section 1601.15 of EEOC's regulations provides that persons or organizations charged with employment discrimination may submit a statement of position or evidence regarding the issues covered by this charge.

EEOC's recordkeeping and reporting requirements are found at Title 29, Code of Federal Regulations (29 CFR): 29 CFR Part 1602 (see particularly Sec. 1602.14 below) for Title VII and the ADA; 29 CFR Part 1620 for the EPA; and 29 CFR Part 1627, for the ADEA. These regulations generally require respondents to preserve payroll and personnel records relevant to a charge of discrimination until disposition of the charge or litigation relating to the charge. (For ADEA charges, this notice is the written requirement described in Part 1627, Sec. 1627.3(b)(3), .4(a)(2) or .5(c), for respondents to preserve records relevant to the charge – the records to be retained, and for how long, are as described in Sec. 1602.14, as set out below). Parts 1602, 1620 and 1627 also prescribe record retention periods – generally, three years for basic payroll records and one year for personnel records. Questions about retention periods and the types of records to be retained should be resolved by referring to the regulations.

Section 1602.14 Preservation of records made or kept. . . . . Where a charge ... has been filed, or an action brought by the Commission or the Attorney General, against an employer under Title VII or the ADA, the respondent ... shall preserve all personnel records relevant to the charge or the action until final disposition of the charge or action. The term personnel records relevant to the charge, for example, would include personnel or employment records relating to the aggrieved person and to all other aggrieved employees holding positions similar to that held or sought by the aggrieved person and application forms or test papers completed by an unsuccessful applicant and by all other candidates or the same position as that for which the aggrieved person applied and was rejected. The date of *final disposition of the charge or the action* means the date of expiration of the statutory period within which the aggrieved person may bring [a lawsuit] or, where an action is brought against an employer either by the aggrieved person, the Commission, or the Attorney General, the date on which such litigation is terminated.

### NOTICE OF NON-RETALIATION REQUIREMENTS

Section 704(a) of Title VII, Section 207(f) of GINA, Section 4(d) of the ADEA, and Section 503(a) of the ADA provide that it is an unlawful employment practice for an employer to discriminate against present or former employees or job applicants, for an employment agency to discriminate against any individual, or for a union to discriminate against its members or applicants for membership, because they have opposed any practice made an unlawful employment practice by the statutes, or because they have made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the statutes. The Equal Pay Act contains similar provisions. Additionally, Section 503(b) of the ADA prohibits coercion, intimidation, threats, or interference with anyone because they have exercised or enjoyed, or aided or encouraged others in their exercise or enjoyment, of rights under the Act.

Persons filing charges of discrimination are advised of these Non-Retaliation Requirements and are instructed to notify EEOC if any attempt at retaliation is made. Please note that the Civil Rights Act of 1991 provides substantial additional monetary provisions to remedy instances of retaliation or other discrimination, including, for example, to remedy the emotional harm caused by on-the-job harassment.

### NOTICE REGARDING REPRESENTATION BY ATTORNEYS

Although you do not have to be represented by an attorney while we handle this charge, you have a right, and may wish to retain an attorney to represent you. If you do retain an attorney, please give us your attorney's name, address and phone number, and ask your attorney to write us confirming such representation.

### Exhibit V

С	aśe 2:10-cv-05398-WJN	И-CLW	Documer	nt 46-5	Filed 09/07/12	Page 31	of 56 Pag	jel
NAN	ME REDACTED OF PER	SON PR	INTING E	MAIL		na de la constitución de la cons		
Fro Ser To: Sul	nt:	tristaten	. August 24, 2 ancrisis@veri	sion.net	9 AM er Kevin Frazier			
) i h	ave all the documents and cer	tified repo	orts from EEC	DC. Ihav	e copies of everythi	ng.		
the	e first email is a co-worker (Da e brother of the Director of IT w ner co-worker. He is a White	vho gets t	o work from h	nis home i	n Florida. I interac	ver he works t with him mo	out of FL, he	e is
sl	he second email is a co-worke ne works in a different departm Beyond	er (Lisa) w nent. <b>She</b>	ho works fror is White an	n the sam d Mexica	e office in Union Ne n <b>Mixed. She still</b>	ew Jersey. H works for Be	owever ed Bath	
eı	the emails had came from a mails. As they are horrible t ritten up for anything at all.	o view. 🗚	LL my revie	ews are ra	ited Above and I h	upset with th	ne een	
K	evin Frazier							
2(	01 430 9028							

1. EEOC is still in the process of investigating, I am told they have so many cases it can take years to finish up an investigation.

Forwarded by Kevin Frazier/IT/Corporate/BBBY on 11/05/2008 07:57 AM ——

"David J Rubin" <djrubin@data-futures.com>

To Kevin Frazier IT/Corporate/BBBY@BBBY

11/04/2008 02:33 PM

Subject FW: Ghetto SpongeBob

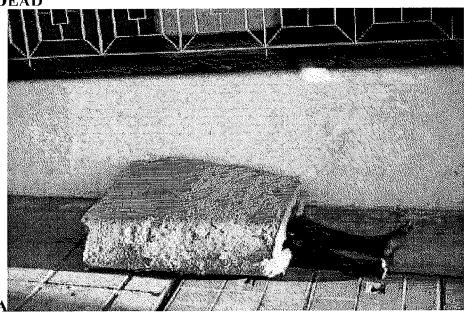
Please respond to

<djrubin@data-futures.com>

### Ghetto SpongeBob found in

### New Orleans

### **DEAD**



Forwarded by Kevin Frazier/|T/Corporate/BBBY on 04/09/2009 11:31 AM ----

Kevin Frazier/IT/Corporate/BBBY

04/09/2009 11:29 AM

To kevin32@aol.com

Subject Fw: WHY- WHY- WHY!!!!

email from employee

Thank You,

Kevin Frazier. MCP #2767182

Bed Bath & Beyond

Database Administration

Office: 1-908-855-4740

Kevin.Frazier@bedbath.com

-- Forwarded by Kevin Frazier/IT/Corporate/BBBY on 04/09/2009 11:30 AM ---

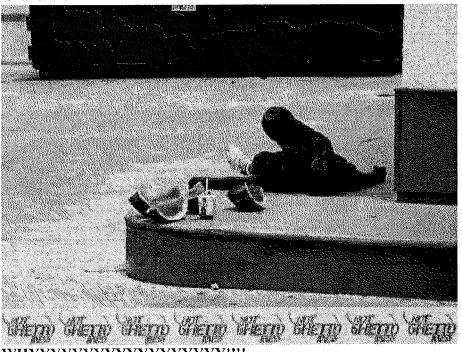
Lisa Del Rey/IT/Corporate/BBBY

To acote@ioncomputer.com, sandysal676@aol.com, juliav@qualcomm.com, kristen,wardlow@libertymutual.com, Kevin Frazier/IT/Corporate/BBBY@BBBY

08/11/2008 02:54 PM

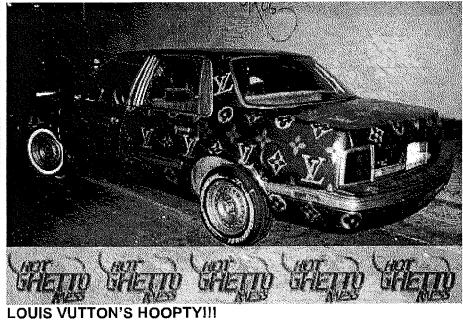
Subject WHY-WHY-WHY!!!!

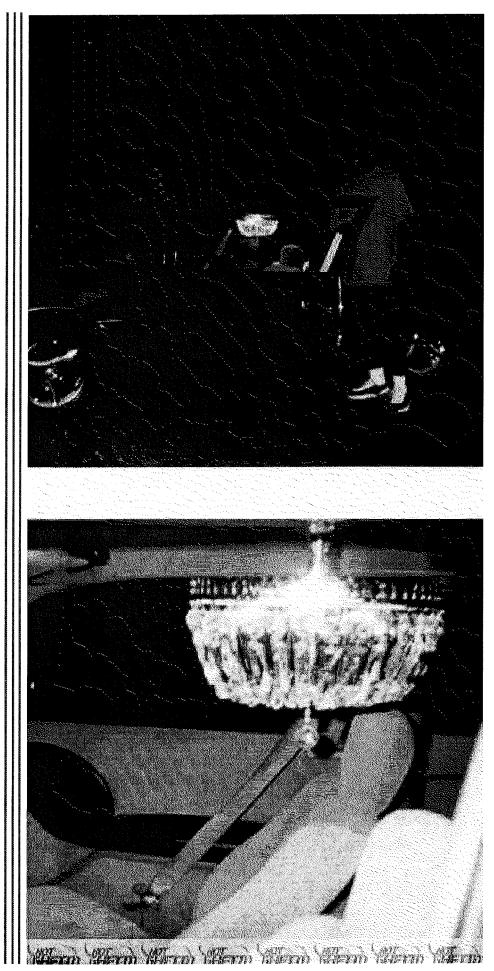
### YOUR FOLKS GOTTA BE SO GHETTO????





I WOULDN'T BE CAUGHT DEAD IN THIS!!!!!!!





----Original Message----

From: kevin frazier [mailto:kevi32@aol.com] Sent: Friday, August 21, 2009 1:51 AM To: shameshameshame@fox5ny.com Subject: Shame Tip (kevin frazier)

Name: kevin frazier

Email Address: kevi32@aol.com

Phone number 201 430 9028

I am sending this letter hopping that It will get to the right person who might be able to present my experience to the Media. So that others will not have to go through this.

Kevin Frazier

Phone number: 201 430 9028 or 201 680 9505

Email: Kevi32@aol.com

Address: 224 Roosevelt street apt 1 union city, NJ 07087

I am a 43 year old African American Male who was working for Bed Bath & Beyond Corporate Office in Union New Jersey for 2 years in the IT department. I have been doing IT work for 14 years, and I am Certified in my filed of work.

The first year working for the company I had no problems. During my second year, I received Some Racial jokes toward African Americans in emails from other co-works. Some that displayed Dead African American from 'Hurricane Katrina', others displayed drunk (empty bottles of Alchol) African American Males with watermelons (a black stereotype) around him. In one email there a total of 13 photos with negative captions towards the African American race. When I reported the emails to my manager, I was told that I was a troublemaker. I then reported the emails to our Human Resource manager. The fact that the emails proved to be from co-workers did not seem to be important to my manager. This made me feel bad, and I then reported the problem to my local E.E.O.C. After reporting the complaints to EEOC, my manager made my life a living hell, by treating me very unfair.

#### Examples of unfair treatment:

- \* Yelling and cursing at me in meetings.
- \* Calling me the 'N' word and thinking it was funny
- Making me work longer hours than other co-workers
- \* Asking me to train co-worker to do my job, one who sent the racial email reported

I was fired and was told the reason I was fired was because 'I filed a complaint with EEOC'. However the company refused to put this in writing. When applying for unemployment BedBath &Beyond reported the reason I was fired was 'misconduct'. When I reported this was not the reason I was fired, I had to be interviewed by the state of New Jersey. During the interview 'Bed Bath & Beyond' changed the reason to 'No reason given'. I was later rewarded my unemployment claim.

It has been 6 months, the co-workers who sent me the email still work and BedBath &Beyond. I am now having problems trying to get a new job, because Bed Bath & Beyond refuse to give any companies' reference, or dates of employment. My life seems like a living hell, as I am slowing losing all I own. It's very hard to go through something like this, and try to get your life back on track. However, I have faith that 'GOD' will help me out of this mess.

I have over 14 years experience in my line of work, but when trying to get reference or dates of employment from Bed Bath & Beyond they will not give other companies my work information. In fact one prospect Employment Company talked to my manger, who stated that I treated him, and that was why I was fired.

If I had to do it all again, I would never say reported this because I would never want to go through slowing losing everything I own, and not being able to keep up with my bills.

Kevin Frazier

201 430 9028

Email: kevi32@aol.com

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ı					

# Exhibit W

Gary

Newton/IT/Corporate/BBBY

09/24/2009 08:25 AM

To Paul DePrima/HR/Corporate/BBBY@BBBY

СC

bcc

Subject Fw: question on Call Schedule

Paul,

Please see the below email chain.

Gary J. Newton Bed Bath & Beyond Database Administration Manager Office: 1-908-688-0888 x4755 gary.newton@bedbath.com

---- Forwarded by Gary Newton/IT/Corporate/BBBY on 09/24/2009 08:24 AM -----

Gary

Newton/IT/Corporate/BBBY

To Paul DePrima/HR/Corporate/BBBY

09/08/2009 04:19 PM

cc David A Ortiz/IT/Corporate/BBBY@BBBY

Subject Fw: question on Call Schedule

Paul,

Attached is the requested email chain regarding Kevin-Frazier being requested to perform the primary SQL Server DBA support role on a going forward basis.

The initial meeting with Kevin was on 12/16/2008. Please read the chain of email to see the questions and responses.

Thanks

Gary J. Newton
Bed Bath & Beyond
Database Administration Manager
Office: 1-908-688-0888 x4755
gary.newton@bedbath.com

---- Forwarded by Gary Newton/IT/Corporate/BBBY on 09/08/2009 04.13 PM -----

Gary

Newton/IT/Corporate/BBBY

To Kevin Frazier/IT/Corporate/BBBY@BBBY

12/18/2008 10:59 AM

CC

Subject Re: question on Call Schedule

Kevin,

There is a difference than before.

Before, Data Futures was being used as primary after hours support every other month. They will not be primary support anymore. You will be the primary support, but if for some reason I can not immediately reach you I may need to a call them and have them start working on the issue until you can call back.

Of course they will be primary when you are on vacation, sick, etc., that does not change.

Gary J. Newton Bed Bath & Beyond Database Administration Manager Office: 1-908-688-0888 x4755 gary.newton@bedbath.com

Kevin Frazier/IT/Corporate/BBBY



Kevin Frazier/IT/Corporate/BBBY 12/18/2008 10:46 AM

To Gary Newton/IT/Corporate/BBBY@BBBY

CC

Subject Re: question on Call Schedule

As always, I have always respond with accurate determination and resolution. If you disagree please give me an example of a time you felt I did not.

I do not think there was ever a time when you or anyone has called me, and left me a message, and I not call them back. Evan when I am not on call, I still answer the phone, and help out with issues as I have been in the past 2 years.

My concern was in our meeting I though, you are going to cut back on use of D.F support. However it now sounds like we can still use them as we did last Friday.

Thank You, Kevin Frazier. MCP #2767182 Bed Bath & Beyond Database Administration Office: 1-908-855-4740 Kevin.Frazier@bedbath.com Gary Newton/IT/Corporate/BBBY

> Gary Newton/IT/Corporate/BBBY

To Kevin Frazier/IT/Corporate/BBBY@BBBY

12/18/2008 10:09 AM

CC

Subject Re: question on Call Schedule

Kevin,

There is going to be the occasional time that you can not immediately respond. You might be at church, at the dentist, or something else. If I can not get you I will call Data Futures. But we would expect that you would call back as soon as possible. Your knowledge of the systems is very important to a fast and

accurate determination and resolution of the issue. It was demonstrated with this past Friday's Customer1 prod issue. When you reviewed the analysis performed by Data Futures, you did not agree and continued to try to find a root cause.

But to be clear, you are our primary support, not Data Futures, going forward. You are expected to carry your phone and have your laptop available if the need arises. As a rule you will be our first contact, with the expectation that if we can not immediately reach you, you will call back asap. It does not mean the next day or after the weekend, but as soon as you reasonable can. Depending on the issue I may have engaged Data Futures, but you would then pick up the support of that issue.

Gary J. Newton Bed Bath & Beyond Database Administration Manager Office: 1-908-688-0888 x4755 gary.newton@bedbath.com

Kevin Frazier/IT/Corporate/BBBY



Kevin Frazier/IT/Corporate/BBBY 12/17/2008 03:48 PM

To Gary Newton/IT/Corporate/BBBY@BBBY

CC

Subject Re: question on Call Schedule

I can not guarantee that I will always be available every single day after work hours & weekends. I need to have time where I do not have to worry about work on weekends and after hours. That being said, as of now where I am on a rotating on-call schedule, there are times I might not be able to answer the phone, yet if someone leaves a message I always call them back.

Thank You, Kevin Frazier. MCP #2767182 Bed Bath & Beyond Database Administration Office: 1-908-855-4740 Kevin.Frazier@bedbath.com Gary Newton/IT/Corporate/BBBY

> Gary Newton/IT/Corporate/BBBY 12/17/2008 10:44 AM

To Kevin Frazier/IT/Corporate/BBBY@BBBY

CC

Subject Re: question on Call Schedule

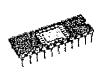
Kevin,

Dave gave the OK for a wireless card for your laptop. The On-Call schedule is as we spoke about but I also mentioned that we can still use Data Futures when you are on vacation. This also includes when you

are sick, working another production issue, or unavailable such as in class, family emergency, etc.

Gary J. Newton Bed Bath & Beyond Database Administration Manager Office: 1-908-688-0888 x4755 gary.newton@bedbath.com

Kevin Frazier/IT/Corporate/BBBY



Kevin Frazier/IT/Corporate/BBBY 12/16/2008 04:59 PM

To Gary Newton/IT/Corporate/BBBY@BBBY

CC

Subject question on Call Schedule

Is it possible to get what is expected for On-Call schedule for me in writing? Just want to make sure I understand what will be expected for 2009, per out conversation today.

Thank You, Kevin Frazier. MCP #2767182 Bed Bath & Beyond Database Administration Office: 1-908-855-4740 Kevin.Frazier@bedbath.com

# Exhibit X



Kevin Frazier/IT/Corporate/BBBY 04/09/2009 11:36 AM To davidz@zatuchniassociates.com

cc

bcc

Subject Fw: Ghetto SpongeBob

---- Forwarded by Kevin Frazier/IT/Corporate/BBBY on 04/09/2009 11:36 AM -----



Kevin Frazier/IT/Corporate/BBBY 04/09/2009 11:29 AM

To kevi32@aol.com

CC

CC

Subject Fw: Ghetto SpongeBob

email from contractor

---- Forwarded by Kevin Frazier/IT/Corporate/BBBY on 04/09/2009 11:29 AM -----



"David J Rubin" <djrubin@data-futures.com>

To "David J Rubin" <djrubin@data-futures.com>

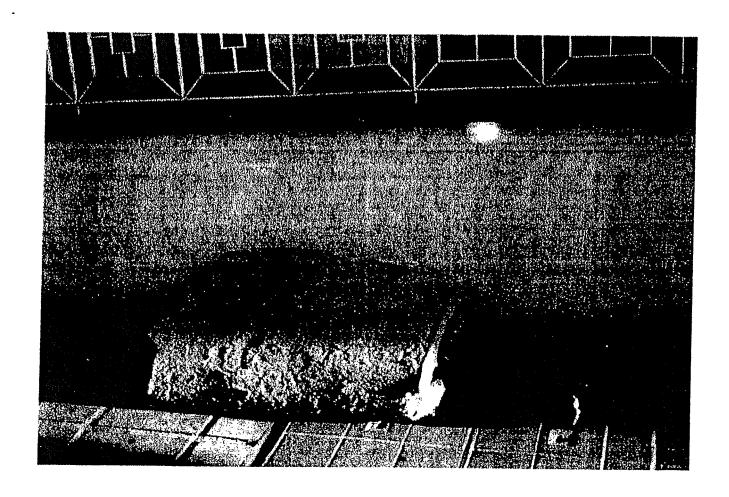
11/04/2008 02:33 PM

Please respond to <djrubin@data-futures.com>

Subject FW: Ghetto SpongeBob

Ghetto SpongeBob found in

New Orleans



# Exhibit Y



Kevin Frazier/IT/Corporate/BBBY 08/11/2008 02:57 PM To Lisa Del Rey/IT/Corporate/BBBY@BBBY cc

bcc

Subject Re: WHY- WHY- WHY!!!

I saw this one before, it's crazy but i am sure it can not be true. I never saw anything like this... well maybe at a prom....

Thank You, Kevin Frazier Bed Bath & Beyond Database Administration Office: 1-908-688-0888 x4740 Kevin.Frazier@bedbath.com

## Exhibit Z



Kevin Frazier/IT/Corporate/BBBY 08/11/2008 03:00 PM To Lisa Del Rey/IT/Corporate/BBBY@BBBY

cc bcc

Subject Re: WHY- WHY- WHY!!!!

well just around area of NJ around prom time you see allot of crazy stuff like this, but this looked like old people from the south some place. the funny one was uncle peaches..\aunt bob

Thank You, Kevin Frazier Bed Bath & Beyond Database Administration Office: 1-908-688-0888 x4740 Kevin.Frazier@bedbath.com

# Exhibit AA



Kevin Frazier/IT/Corporate/BBBY 11/04/2008 02:41 PM To <djrubin@data-futures.com>

cc "David J Rubin" <djrubin@data-futures.com>

bcc

Subject Re: FW: Ghetto SpongeBob□

Imao!!!

Thank You,
Kevin Frazier. MCP #2767182
Bed Bath & Beyond
Database Administration
Office: 1-908-688-0888 x4740
Kevin.Frazier@bedbath.com
"David J Rubin" <djrubin@data-futures.com>



"David J Rubin" <djrubin@data-futures.com>

11/04/2008 02:33 PM

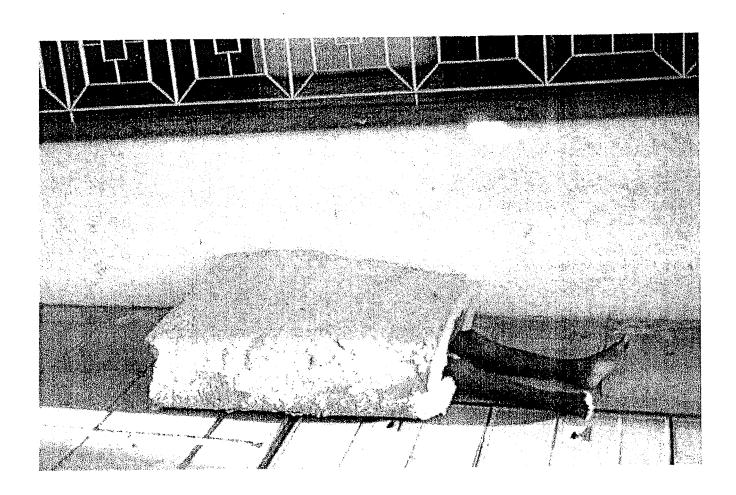
Please respond to <djrubin@data-futures.com> To "David J Rubin" <djrubin@data-futures.com>

CC

Subject FW: Ghetto SpongeBob

Ghetto SpongeBob found in

New Orleans



### Exhibit BB

UNITED	STATES	DISTRICT	COURT
DIST	RICT OF	F NEW JEE	RSEY

	X			
KEVIN FRAZIER,	;	Civil Action No.: 10-CV-539	:V-5398 M)(MAS	
Plaintiff,	;	( ** **(**)(*****		
ν,	:			
BED BATH AND BEYOND INC, and GARY NEWTON, in his individual and professional capacities.	;	DECLARATION OF MICHAEL H. WILCH		
Defendants.	; ; x			

#### I, MICHAEL H. WILCK, of full age, hereby declare as follows:

- 1. I am an Attorney-at-Law of the State of New Jersey and am employed as in-house counsel to Bed Bath & Beyond Inc. ("BBB"). In that capacity, I am fully familiar with the facts of the above matter. I submit this Declaration in opposition to Plaintiff Kevin Frazier's ("Frazier") Motion To Preclude Use of Certain Late Produced Documents.
- 2. The complaint in the above matter was filed on October 20, 2010. In November 2010, shortly after BBB was served with the Complaint, I requested and obtained various email files. These email files included (i) Frazier's email account as it existed on May 17, 2009 (several days after his termination), and (ii) Ms. Del Rey's email account as it existed on May 12, 2009 (the day after Frazier was terminated). David Rubin is not an employee of BBB and thus BBB does not have control of his email file. I turned over these email files to BBB's outside counsel, Proskauer Rose LLP.
- 3. Frazier's email replies to Del Rey's allegedly "highly offensive" email -- which stated that Frazier had seen the email before, and that he found at least one of the images to be funny -- do not exist in either of these email files. Likewise, Frazier's email reply to David

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Rubin's allegedly "callous and racially insensitive" email, in which he stated "LMAO!!!", did not exist in Frazier's email file.

- 4. On or about December 9, 2011, I was informed by BBB's outside counsel,

  Proskauer Rose LLP, that during their conversation with David Rubin in advance of his

  December 15, 2011 deposition, Mr. Rubin stated his recollection that shortly after he mistakenly sent Frazier the allegedly offensive email. Frazier replied indicating that he thought the email was funny. No such reply, however, existed in Frazier's email file.
- 5. In light of this information, and because Frazier's email file would not reflect emails which he had deleted, on December 13, 2011, I obtained from BBB's backup email server a restored image of Frazier's email file as it existed on November 4, 2008, the date of the David Rubin email. My search of that restored file revealed Frazier's response to the Rubin email, which BBB produced to Mr. Zatuchni on December 14, 2011. Proskauer's subsequent review of that email file revealed Frazier's replies to the Del Rey email, which were produced to Mr. Zatuchni on January 5, 2012.
- 6. Based on the above, it is clear that Frazier deleted the emails in question sometime between November 4, 2008 and May 17, 2009. BBB's delay in finding and producing those emails was caused by Frazier deleting the emails from his email file.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

(Charlet Michael H. Wilck

Dated: February 27, 2012